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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–067–1]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. The addition of the two plant inspection stations will help reduce transportation time and costs to importers who must currently import plants through inspection stations that are considerably distant from the importers' facilities.

DATES: This rule will be effective on February 17, 2004, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 20, 2004. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 03–067–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–067–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–067–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit de Mange, Senior Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1232; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

In § 319.37–14 of the regulations, paragraph (b) contains a list of approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest and disease risk, may be imported only through ports equipped with special inspection and treatment facilities. These ports, known as plant inspection stations, are indicated on the list by an asterisk.

Currently, 14 plant inspection stations operate at or near many major U.S. ports and airports. These facilities are designed for inspection and, in some cases, treatment of imported plants and seeds. Plant Protection and Quarantine (PPQ) staffs plant inspection stations with officers who specialize in, among other things, entomology, plant pathology, and botany.

At plant inspection stations, PPQ officers inspect imported plants and seeds to ensure that they are free from plant pests and diseases that are known not to occur in the United States and that they otherwise comply with U.S. import regulations. When pests or diseases are detected, PPQ may require that the planting material be treated, exported, or destroyed.

In order to be designated as a plant inspection station, a building must have adequate space for inspection areas to be set up, laboratory facilities for pest and disease identification, provide easy access by shipments for inspection, and, in most cases, contain various treatment facilities. We have determined that the facilities in Atlanta, GA, and Agana, GU, satisfy the criteria for designation as plant inspection stations.

Therefore, in accordance with the procedures explained below under ''Dates,'' this rule amends the list of ports of entry in § 319.37–14(b) by replacing the current entries for Atlanta, GA, and Agana, GU, on the list and designating those ports as plant inspection stations.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on February 17, 2004, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 20, 2004.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would add Atlanta, GA, and Agana, GU, as ports of entry through which individuals and companies would be able to import nursery stock. This action would save business costs to concerned individuals and companies, making the routing of nursery stock materials to other authorized entry ports unnecessary.

We are amending the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. The addition of the two plant inspection stations will help reduce transportation time and costs to importers who must currently import plants through inspection stations that are considerably distant from the importers' facilities.

The United States imported about 700 million plant units in 2002, about 4.6 percent over the previous year and 21 percent above 2000 level.[1] Nursery stock imports were valued at $591 million in 2002, an increase of about 135 percent over a decade ago. The major sources are Canada (50.4 percent), Netherlands (25.5 percent), Costa Rica (3.9 percent), Mexico (2.7 percent), and Taiwan (2.2 percent). Nursery stock exports were valued at $250 million in 2002, about 13 percent over 1992 total.[2]

Planting seeds are imported from many countries, with a few countries accounting for the major proportion of U.S. total planting seed imports. The leading suppliers are Chile ($105.8 million), Canada ($105 million), the Netherlands ($36.5 million), Argentina ($21.2 million), China ($17.9 million), Japan ($14 million), Finland ($11.1 million), Australia ($8.3 million), Denmark ($7.5 million), and India ($7.1 million) in 2001.[3] These 10 countries accounted for $334.4 million, or about 84 percent, of total U.S. planting seed imports.

Nursery Stock Industry

The availability of good quality nursery stock and seeds contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. Presently, imported nursery stock and seeds can enter the United States with a phytosanitary certificate through 14 approved plant inspection stations. Atlanta, GA, and Agana, GU, though not listed as approved Federal plant inspection stations, currently serve as ports of entry for other restricted articles that do not require a permit. The new facilities in Georgia and Guam have the capacity and resources to handle the importation of nursery stock and seeds, which will allow them to be listed as plant inspection stations.

This action may result in reduced costs for importers by making the routing of nursery stock materials through another plant inspection station unnecessary when the materials are destined for the regions of Atlanta, GA, or Agana, GU. Importers and distributers both in Atlanta, GA, and Agana, GU, should benefit from transportation cost savings and reduced plant injury that can result during transport.

The Agana International Airport serves Guam and surrounding islands, which are growing tourist centers. Currently, most of the nursery stock imported into Guam is routed through Hawaii. Very little is imported from Asian sources because of the time and cost involved in shipping to Federal plant inspection stations in Hawaii and then to Guam. Additionally, plant mortality is high due to the additional time involved routing through Honolulu, HI, which is a major factor apart from the shipping cost. The direct air cargo cost from Narita, Japan, to Honolulu, HI, is $11.96 per kilogram and from Hawaii to Guam is $6.65 per kilogram for a total routing cost from Narita to Guam of $18.61 per kilogram. The direct air cargo cost from Narita to Guam is $7.04 per kilogram. Thus, as Agana becomes an approved Federal plant inspection station, importers will benefit from direct importation of nursery stock materials from Japan, Taiwan, China, the Philippines, and other Asian countries through reduced transportation costs. Presently there are 20 establishments engaged in nursery stock trade in Guam. The number of establishments that import nursery stock may increase because of the reduced transportation costs, reduced time, and lower probability of damaged plants.

The Hartsfield Atlanta International Airport is becoming a major air cargo hub. It is an entry port for other restricted articles that do not require a permit and is much closer to most nursery stock importers from the surrounding areas and States (northern Alabama, North Carolina, South Carolina, southern Virginia, Kentucky, and Tennessee) than any of the other closest Federal plant inspection stations in Miami, FL, New Orleans, LA, and Orlando, FL. There are about 470 retail nursery companies in Georgia alone, of which 141 are in metropolitan areas. Nursery retailers from the surrounding areas that import products would benefit from reduced routing costs and reduced mortality of plants that usually occurs from multiple box openings for inspection and from the longer time elapsed between the place of origin and the final destination.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The Small Business Administration (SBA) has established the size standards for determining which economic entities meet the definition of a small firm. A retail nursery or lawn and garden store (NAICS code 444220)[4] is defined as a small business if it employs 100 or fewer workers. Resort hotels, golf courses, and local governments that use nursery stock for parks and landscaping could be affected. Additionally, specialized groups such as horticultural societies, arboreta, and individual plant hobbyists who import and exchange nursery stock and small lots of seed could also be affected.

Nationally, there are 6,845 establishments that are engaged in selling trees, shrubs, other plants, seeds, bulbs, mulch, and related products (NAICS 444220). About 470 of these are in Georgia, including the Atlanta metropolitan area. There are 20 companies currently engaged in nursery stock trade in Guam. Over 99 percent are small entities. However, specialized groups such as horticultural societies, arboreta, several resort hotels, golf courses, and local governments that use imported plants for landscaping

[1] USDA/APHIS/PPQ, WADS Database, June 2003.

[2] USDA/ERS, *Foreign Agricultural Trade of the United States,* June 30, 2003.

[3] USDA/FAS, FAS Online: U.S. Planting Seed Trade Archives *(http://www.fas.usda.gov/seed_arc.html)*

[4] U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

projects, and individual hobbyists who collect, grow, exhibit, preserve, exchange, and donate special nursery stocks and seeds could also be affected. The exact present size and number of these entities are difficult to determine.

Since Atlanta, GA, and Agana, GU, already serve as ports of entry for other restricted articles and have the capacity and resources to handle the importation of nursery stock and seeds, no effect on Federal Government processing of permits and inspection of imported materials is expected. Also, no effects on other Federal agencies and State and local governments are expected. Since imports of these materials are a small fraction of the total domestic supply of nursery stock and seeds, no substantial change in supply and price is expected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.37–14, paragraph (b), the list of ports of entry is amended by revising the entries for Atlanta, Georgia, and Agana, Guam, to read as follows:

§ 319.37–14 Ports of entry.

* * * * *

(b) * * *

List of Ports of Entry

* * * * *

Georgia

Atlanta

Hartsfield Atlanta International Airport, Atlanta, GA 30320. * * *

Guam

Agana

Guam International Airport, Tamuning, GU 96931.

* * * * *

Done in Washington, DC, this 11th day of December, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31203 Filed 12–17–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH28

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 7 in Certificate of Compliance (CoC) Number 1004. Amendment No. 7 will incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged Boiling Water Reactor spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, the amendment includes three minor changes to the Technical Specifications to correct inconsistencies and remove irrelevant references.

DATES: The final rule is effective March 2, 2004, unless significant adverse comments are received by January 20, 2004. A significant adverse comment is one which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH28) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at http://ruleforum.llnl.gov. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/*

index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed CoC, proposed Technical Specifications (TS), and preliminary Safety Evaluation Report (SER) can be found under ADAMS Accession Nos. ML032100773, ML032100775, and ML032100776, respectively.

CoC No. 1004, the revised Conditions for Cask Use and TS, the underlying SER for Amendment No. 7, and the Environmental Assessment (EA) are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) cask designs and added them to the list of NRC-approved cask designs in § 72.214 as CoC No. 1004. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT, and –24PHB designs to the Standardized NUHOMS® System.

Discussion

On March 29, 2002, and as supplemented on February 14, 2003, and July 10, 2003, the certificate holder, Transnuclear, Inc. (TN), submitted an application to the NRC to amend CoC No. 1004 to incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged Boiling Water Reactor (BWR) spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, three minor changes to the TS were requested to correct inconsistencies and remove irrelevant references. No other changes to the Standardized NUHOMS® System were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System listing in § 72.214 by adding Amendment 7 to CoC No. 1004. The amended TS are identified in the NRC staff's SER for Amendment 7.

The amended Standardized NUHOMS® System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment Number 7.

Procedural Background

This rule is limited to the changes contained in Amendment 7 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on March 2, 2004. However, if the NRC receives significant adverse comments by January 20, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by January 20, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed

amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS® System listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license by revising the NUHOMS®–61BT to incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged BWR spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister. In addition, the amendment includes three minor changes to the TS to correct inconsistencies and remove irrelevant references. The environmental assessment (EA) and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) by adding it to the list of NRC-approved cask designs in § 72.214. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT,and –24PHB cask designs to the Standardized NUHOMS® System. On March 29, 2002, and as supplemented on February 14, 2003, and July 10, 2003, the certificate holder, Transnuclear, Inc. (TN), submitted an application to the NRC to amend CoC No. 1004 to incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged BWR spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, the amendment includes three minor changes to the TS to correct inconsistencies and remove irrelevant references.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to the general license for each utility that decides to use the amended cask system design. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations

issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS® –52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS® –24PHB.

* * * * *

Dated at Rockville, Maryland, this 19th day of November, 2003.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 03–31207 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 4 and 111

[Notice 2003–25]

Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is adopting an interim policy with respect to placing closed files on the public record in enforcement, administrative fines, and alternative dispute resolution cases. The categories of records that will be included in the public record are described below. This is an interim policy only; the Commission will conduct a rulemaking in this respect, with full opportunity for public comment, in 2004.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vincent J. Convery, Jr., Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, 202–694–1650 or 1–800–424–9530.

SUPPLEMENTARY INFORMATION: The ''confidentiality provision'' of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, (FECA), provides that: ''Any notification or investigation under [Section 437g] shall not be made public by the Commission * * * without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.'' 2 U.S.C. 437g(a)(12)(A). For approximately the first twenty-five years of its existence, the Commission viewed the confidentiality requirement as ending with the termination of a case. The Commission placed on its public record the documents that had been considered by the Commissioners in their determination of a case, minus those materials exempt from disclosure under the FECA or under the Freedom of Information Act, 5 U.S.C. 552, (FOIA). *See* 11 CFR 5.4(a)(4). In *AFL–CIO* v. *FEC*, 177 F.Supp.2d 48 (D.D.C. 2001), the district court disagreed with the Commission's interpretation of the confidentiality provision and found that the protection of section 437g(a)(12)(A) does not lapse at the time the Commission terminates an investigation. 177 F.Supp.2d at 56.

Following that district court decision, the Commission placed on the public record only those documents that reflected the agency's ''final determination'' with respect to enforcement matters. Such disclosure is required under section 437g(a)(4)(B)(ii) of the FECA and section (a)(2)(A) of the FOIA. In all cases, the final determination is evidenced by a certification of Commission vote. The Commission also continued to disclose documents that explained the basis for the final determination. Depending upon the nature of the case, those documents consisted of General Counsel's Reports (frequently in redacted form); Probable Cause to Believe Briefs; conciliation agreements;

Statements of Reasons issued by one or more of the Commissioners; or, a combination of the foregoing. The district court indicated that the Commission was free to release these categories of documents. *See* 177 F.Supp.2d at 54 n.11. In administrative fines cases, the Commission began placing on the public record only the Final Determination Recommendation and certification of vote on final determination. In alternative dispute resolution cases, the public record consisted of the certification of vote and the negotiated agreement.

Although it affirmed the judgment of the district court in *AFL–CIO*, the Court of Appeals for the District of Columbia Circuit differed with the lower court's restrictive interpretation of the confidentiality provision of 2 U.S.C. 437g(a)(12)(A). The Court of Appeals stated that: ''the Commission may well be correct that * * * Congress merely intended to prevent disclosure of the fact that an investigation is pending,'' and that: ''deterring future violations and promoting Commission accountability may well justify releasing more information than the minimum disclosures required by section 437g(a).'' *See AFL–CIO* v. *FEC*, 333 F.3d 168 (D.C. Cir. 2003) at 174, 179. However, the Court of Appeals warned that, in releasing enforcement information to the public, the Commission must ''attempt to avoid unnecessarily infringing on First Amendment interests where it regularly subpoenas materials of a 'delicate nature * * * represent[ing] the very heart of the organism which the first amendment was intended to nurture and protect.' '' *Id*. at 179. (Citation omitted). The decision suggested that, with respect to materials of this nature, a ''balancing'' of competing interests is required—on one hand, consideration of the Commission's interest in promoting its own accountability and in deterring future violations and, on the other, consideration of the respondent's interest in the privacy of association and belief guaranteed by the First Amendment. Noting that the Commission had failed to tailor its disclosure policy to avoid unnecessarily burdening the First Amendment rights of the political organizations it investigates, *id*. at 178, the Court found the agency's disclosure regulation at 11 CFR 5.4(a)(4) to be impermissible. *Id*. at 179.

The Commission is issuing this interim policy statement to identify several categories of documents integral to its decisionmaking process that will be disclosed upon termination of an enforcement matter. The categories of documents that the Commission intends to disclose either do not implicate the Court's concerns, *e.g.*, categories 8, 9 and 10, or, because they play a critical role in the resolution of a matter, the balance tilts decidedly in favor of public disclosure, even if the documents reveal some confidential information.

With respect to enforcement matters, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. General Counsel's Reports that recommend dismissal, reason to believe, no reason to believe, no action at this time, probable cause to believe, no probable cause to believe, no further action, or acceptance of a conciliation agreement;
4. Notification of reason to believe findings (including Factual and Legal Analysis);
5. Respondent's response to reason to believe findings;
6. Briefs (General Counsel's Brief and Respondent's Brief);
7. Statements of Reasons;
8. Conciliation Agreements;
9. Evidence of payment of civil penalty or of disgorgement; and
10. Certifications of Commission votes.

In addition, the Commission will make certain other documents available which will assist the public in understanding the record without intruding upon the associational interests of the respondents. These are:

1. Designations of counsel;
2. Requests for extensions of time;
3. Responses to requests for extensions of time; and
4. Closeout letters.

The Commission is placing the foregoing categories of documents on the public record in all matters it closes on or after January 1, 2004.

The Commission is not placing on the public record certain other materials from its investigative files, such as subpoenaed records, deposition transcripts, and other records produced in discovery, even if those evidentiary documents are referenced in, or attached to, documents specifically subject to release under this interim practice. Release of these underlying evidentiary documents may require a closer balancing of the competing interests cited by the D.C. Circuit. Accordingly, the Commission will consider the appropriateness of disclosing these materials only after a full rulemaking with the opportunity for public comment. However, if a document or record is referenced in, or attached to, a document specifically subject to release under this interim practice, that document or record will be disclosed if it is, or was, otherwise publicly available.

The Commission will place documents on the public record in all cases that are closed, regardless of the outcome. By doing so, the Commission complies with the requirements of 2 U.S.C. 437g(a)(4)(B)(ii) and 5 U.S.C. 552(a)(2)(A). Conciliation Agreements are placed on the public record pursuant to 2 U.S.C. 437g(a)(4)(B)(ii).

The Commission will place these documents on the public record as soon as practicable, and will endeavor to do so within thirty days of the date on which notifications are sent to complainant and respondent. *See* 11 CFR 111.20(a). In the event a Statement of Reasons is required, but has not been issued before the date proposed for the release the remainder of the documents in a matter, those documents will be placed on the public record and the Statement of Reasons will be added to the file when issued.

With respect to administrative fines cases, the Commission will place the entire administrative file on the public record, which includes the following:

1. Reason to Believe recommendation;
2. Respondent's response;
3. Reviewing Officer's memoranda to the Commission;
4. Final Determination recommendation;
5. Certifications of Commission votes;
6. Statements of Reasons;
7. Evidence of payment of fine; and
8. Referral to Department of the Treasury.

With respect to alternative dispute resolution (ADR) cases, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. ADR Office's case analysis report to the Commission;
4. Notification to respondent that case has been assigned to ADR;
5. Letter or Commitment Form from respondent participating in the ADR program;
6. ADR Office recommendation as to settlement;
7. Certifications of Commission votes;
8. Negotiated settlement agreement; and
9. Evidence of compliance with terms of settlement.

When disclosing documents in administrative fines and alternative dispute resolution cases, the Commission will release publicly available records that are referenced in,

or attached to, documents specifically subject to release under this interim practice.

With this interim policy, the Commission intends to provide guidance to outside counsel, the news media, and others seeking to understand the Commission's disposition of enforcement, administrative fines, and alternative dispute resolution cases and, thus, to enhance their ability to assess particular matters in light of past decisions. In all matters, the Commission will continue to redact information that is exempt from disclosure under the FECA and the FOIA.

As discussed above, the Commission hereby is announcing an interim policy. A rulemaking, with full opportunity for public comment, will be initiated in 2004.

Dated: December 12, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–31241 Filed 12–17–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–266–AD; Amendment 39–13388; AD 2003–25–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, that currently requires inspections to detect breakage in the struts of the rear mount strut assemblies on the left and right engine nacelles, and replacement of any broken struts. The existing AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. The amendment requires new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The amendment also changes the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and includes an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent failure of the engine rear mount struts, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe conditions.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–04–09, amendment 39–8829 (59 FR 8393, February 22, 1994), which is applicable to certain Bombardier Model DHC–8–100 and DHC–8–300 airplanes, was published in the **Federal Register** on October 9, 2003 (68 FR 58283). The action proposed to require new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The action also proposed to change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and proposed to include an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 192 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94–04–09 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane.

The new detailed inspection that is required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $12,480, or $65 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional terminating action, if done, will take approximately 16 work hours per strut to accomplish, at an average labor rate of $65 per work hour. Required parts will cost aproxiamately $800 per strut. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,840 per strut, per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under

Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8829 (59 FR 8393, February 22, 1994), and by adding a new airworthiness directive (AD), amendment 39–13388, to read as follows:

2003–25–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13388. Docket 2001–NM–266–AD. Supersedes AD 94–04–09, Amendment 39–8829.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 509 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine rear mount struts on the left and right engine nacelles, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

Repetitive Inspections

(a) Within 1,000 flight hours since installation of any new or reworked rear mount strut per the replacement required by paragraph (b) of AD 94–04–09, amendment 39–8829, or within 250 flight hours after the effective date of this AD, whichever is later; do a detailed inspection for cracking of each rear mount strut in the left and right engine nacelles.

Note 1: Bombardier Service Bulletin 8–71–24, dated August 21, 2001, does not contain inspection procedures for the detailed inspection required by paragraph (a) of this AD; however, the definition of a detailed inspection is specified in Note 2 of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no crack is found, repeat the inspection at intervals not to exceed 250 flight hours, until accomplishment of paragraph (b) of this AD.

(2) If any crack is found, before further flight, replace the strut with a new, improved strut per Bombardier Service Bulletin 8–71–24, dated August 21, 2001. Repeat the inspection thereafter at intervals not to exceed 50 flight hours, for that nacelle only.

Optional Terminating Action

(b) Replacement of both rear mount struts in a nacelle with new, improved struts, by doing all the actions specified in the Job Set-up, Procedure, and Close-out sections of the Accomplishment Instructions of Bombardier Service Bulletin 8–71–24, dated August 21, 2001, ends the repetitive inspections required by this AD for that nacelle only. Replacement of both rear mount struts on both the left and right engine nacelles ends the repetitive inspections required by this AD.

Parts Installation

(c) As of the effective date of this AD, no person shall install an engine rear mount strut, P/N 87110016–001, –003, –005, –007, –009, or –011, on any airplane.

Alternative Methods of Compliance

In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 8–71–24, dated August 21, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–20, dated May 16, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31058 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–137–AD; Amendment 39–13389; AD 2003–25–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–622R and A300 F4–622R Airplanes, and Model A310–324 and –325 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B4–622R and A300 F4–622R airplanes, and Model A310–324 and –325 series airplanes, that are equipped with Pratt & Whitney PW4000 series engines. This AD requires replacement of the existing flexible hose assembly that connects the oil pressure transmitter to the main oil circuit, with a new improved tube assembly. This action is necessary to prevent failure of the oil pressure indicator and low-oil-pressure warning in the event of an engine fire, which could result in an unannounced shutdown of the engine. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–622R and A300 F4–622R airplanes, and Model A310–324 and –325 series airplanes, that are equipped with Pratt & Whitney PW4000 series engines, was published in the **Federal Register** on September 19, 2003 (68 FR 54872). That action proposed to require replacement of the existing flexible hose assembly that connects the oil pressure transmitter to the main oil circuit, with a new improved tube assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter has no objection to the proposed AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will be provided by the manufacturer at no charge. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $90,350, or $650 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–06 Airbus: Amendment 39–13389. Docket 2002–NM–137–AD.

Applicability: Model A300 B4–622R and A300 F4–622R airplanes, and Model A310–324 and –325 series airplanes, equipped with Pratt & Whitney PW4000 series engines; certificated in any category; except those on which Airbus Modification 12468 has been accomplished in production.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the oil pressure indicator and low-oil-pressure warning in the event of an engine fire, which could result in an unannounced shutdown of the engine, accomplish the following:

Replacement

(a) Within 8 months after the effective date of this AD, replace the existing flexible hose assembly, part number (P/N) 113286, that connects the oil pressure transmitter to the main oil circuit, with a new improved tube assembly, P/N 221–5318–501. Before further flight after the replacement, perform a test of the engine oil system. Do these actions according to the Accomplishment Instructions of the service bulletin specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300 B4–622R and A300 F4–622R airplanes: Airbus Service Bulletin A300–79–6003, dated January 31, 2002.

(2) For Model A310–324 and –325 series airplanes: Airbus Service Bulletin A310–79–2004, dated January 31, 2002.

Note 1: Airbus Service Bulletins A300–79–6003 and A310–79–2004 refer to Pratt & Whitney Alert Service Bulletin PW4NAC A79–21, dated October 15, 2001, as an additional source of service information for the replacement required by this AD.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Airbus Service Bulletin A300–79–6003, dated January 31, 2002; or Airbus Service Bulletin A310–79–2004, dated January 31, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–173(B), dated April 3, 2002.

Effective Date

(d) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31059 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–57–AD; Amendment 39–13390; AD 2003–25–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes Equipped With Elevator and Aileron Computer (ELAC) L80 Standard

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes, that currently requires revising the airplane flight manual to specify procedures for landing under certain conditions of gusty winds and turbulence. This amendment requires replacement of both Elevator and Aileron Computers (ELACs) having L80 standards with new ELACs having L81 standards, which terminates the requirements of the existing AD. The actions specified by this AD are intended to prevent activation of the high angle-of-attack protection during final approach for landing, which could result in loss of ability to flare properly during landings. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–08–26, amendment 39–12203 (66 FR 20912, April 26, 2001), which is applicable to certain Airbus Model A319 and A320 series airplanes, was published in the **Federal Register** on September 18, 2003 (68 FR 54691). The action proposed to require revising the airplane flight manual to specify procedures for landing under certain conditions of gusty winds and turbulence. The action also proposed to require replacement of both Elevator and Aileron Computers (ELACs) having L80 standards with new ELACs having L81 standards, which would terminate the requirements of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 350 airplanes of U.S. registry that will be affected by this AD.

The AFM revision currently required by AD 2001–08–26 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $22,750, or $65 per airplane.

The new replacement required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $22,750, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12203 (66 FR 20912, April 26, 2001), and by adding a new airworthiness directive (AD), amendment 39–13390, to read as follows:

2003–25–07 Airbus: Amendment 39–13390. Docket 2002–NM–57–AD. Supersedes AD 2001–08–26, Amendment 39–12203.

Applicability: Model A319 and A320 series airplanes; certificated in any category; equipped with Elevator and Aileron Computer (ELAC) L80 Standard having part numbers listed in Airbus Service Bulletin A320–27–1135, dated June 29, 2001.

Compliance: Required as indicated, unless accomplished previously.

To prevent activation of the high angle-of-attack protection during final approach for landing, which could result in loss of the

ability to flare properly during landings, accomplish the following:

Restatement of Requirements of AD 2001–08–26

Revision of Airplane Flight Manual (AFM)

(a) Within 10 days after May 11, 2001 (the effective date of AD 2001–08–26, amendment 39–12203): Revise the Limitations Section of the AFM to incorporate the following procedures. This may be accomplished by inserting a copy of this AD into the AFM. This action is required until accomplishment of paragraph (b) of this AD.

''FOR APPROACH TO RUNWAYS WITH KNOWN GUSTY ENVIRONMENT, ESPECIALLY IF THESE CONDITIONS GENERATE VERTICAL GUSTS DUE TO THE SURROUNDING TERRAIN, OR

—REPORTED GUST WIND INCREMENT (MAX. WIND MINUS AVERAGE WIND) HIGHER THAN 10 KT, OR

—EXPECTED MODERATE TO SEVERE TURBULENCE ON SHORT FINAL,

THE FLIGHT CREW SHOULD STRICTLY ADHERE TO THE FOLLOWING PROCEDURE:

—USE CONF 3 FOR APPROACH AND LANDING,

—MINIMUM VAPP IS VLS + 10 KT; THE RECOMMENDATION TO USE MANAGED SPEED REMAINS VALID,

—CORRECT THE LANDING DISTANCE FOR THE SPEED INCREMENT,

—IF ''SINK RATE'' GPWS WARNING OCCURS BELOW 200 FT, IMMEDIATELY INITIATE A GO AROUND.''

New Requirements of This AD

Replacement

(b) Within 1 year after the effective date of this AD: Replace both Elevator and Aileron Computers (ELACs) having L80 standards with new ELACs having L81 standards, by doing all the actions per paragraphs A., B., C., and D. of the Accomplishment Instructions of Airbus Service Bulletin A320–27–1135, dated June 29, 2001. Accomplishment of this replacement ends the requirements in paragraph (a) of this AD.

Part Installation

(c) As of the effective date of this AD, no person may install on any airplane an ELAC having a part number listed in the ''Old Part Number'' column in the table specified in paragraph 2.C., ''List of Components,'' of Airbus Service Bulletin A320–27–1135, dated June 29, 2001.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001–08–26, amendment 39–12203, are approved as alternative methods of compliance with paragraph (a) of this AD.

Incorporation by Reference

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–27–1135, dated June 29, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–508(B), dated October 17, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31060 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–295–AD; Amendment 39–13385; AD 2003–25–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 and 777–300 series airplanes, that requires application of high-temperature sealant in designated areas of the strut aft dry bay. The actions specified by this AD are intended to prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6513; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 777–200 and 777–300 series airplanes was published in the **Federal Register** on November 18, 2002 (67 FR 69493). That action proposed to require application of high-temperature sealant to the strut aft dry bay.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Add Inspection To Determine Whether Sealant Was Applied During Production

Several commenters stated that, in some of the airplanes on the effectivity list of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001, (referenced in the proposed rule as the appropriate service bulletin), high-temperature sealant had been applied to the strut aft dry bay at the factory during production with no signs of damage or leakage. According to these commenters, The Boeing Company confirmed that not all the airplanes on the effectivity list were delivered with sealant missing from the designated areas of the strut aft dry bay. The commenters request, therefore, that the AD (1) add an inspection of those areas to determine whether sealant had been applied during production, and (2) require application of sealant only if had not been applied.

The FAA concurs with the commenters' request. We requested and subsequently approved a revision to the Boeing service bulletin. Service Bulletin 777–54A0016, Revision 1, dated July 10, 2003, adds an inspection for high-temperature sealant in the designated areas of the strut aft bay. If it is found

that sealant has been properly applied at each of the designated areas during production, no further action is required. If it is found that sealant is missing or damaged at any of the designated areas, it must be applied. Paragraphs (b)(1) and (b)(2) have been added to this AD to specify the appropriate action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. In adding paragraphs (b)(1) and (b)(2) to this AD, we considered whether they would increase the economic burden on any operator or increase the scope of the AD. Our conclusion is that, if paragraph (b)(1) applies, it will be relieving; if paragraph (b)(2) applies, it will be neutral in its effect. Therefore, there is no need to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

There are approximately 298 Model 777–200 and 777–300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $20 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $26,600, or $280 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–02 Boeing: Amendment 39–13385. Docket 2001–NM–295–AD.

Applicability: Model 777–200 and 777–300 series airplanes having line numbers 2 through 297 inclusive, 299, and 300; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay; accomplish the following:

Application of Sealant

(a) Within 1,000 flight hours after the effective date of this AD: Except as provided in paragraph (b) of this AD, apply high-temperature sealant to designated areas in the strut aft dry bay, in accordance with the Accomplishment Instruction of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or with Revision 1, dated July 10, 2003.

(b)(1) If, upon opening the strut aft fairing forward access panels in accordance with the Accomplishment Instruction of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or with Revision 1, dated July 10, 2003; it is observed that high-temperature sealant has already been properly applied to each of the designated areas in the strut aft dry bay, no further action is required.

(2) If, upon opening the strut aft fairing forward access panels in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or with Revision 1, dated July 10, 2003; it is observed that high-temperature sealant has been improperly applied to any of the designated areas in the strut aft dry bays, re-apply the sealant in each such area in accordance with either of the service bulletins.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or Boeing Service Bulletin 777–54A0016, Revision 1, dated July 10, 2003. This incorporation by reference was approved by the Director of the

Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31061 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–78–AD; Amendment 39–13386; AD 2003–25–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes, that requires a one-time inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production engine mount assemblies, and follow-on corrective actions if necessary. This action is necessary to prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes was published in the **Federal Register** on October 9, 2003 (68 FR 58287). That action proposed to require a one-time inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production engine mount assemblies, and follow-on corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,430, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13386. Docket 2002–NM–78–AD.

Applicability: Model DHC–8–400, –401, and –402 airplanes; serial numbers 4005, 4006, 4008 through 4016 inclusive, 4018 through 4051 inclusive, and 4053; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

Inspection

(a) Within 100 flight cycles after the effective date of this AD: Do a general visual inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production assemblies (determine the part number and configuration for each assembly), per the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001. If no pre-production engine mount assembly is installed, no further action is required by this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-on Corrective Actions

(b) If any pre-production engine mount assembly is installed, do all the applicable follow-on corrective actions (including repetitive detailed inspections for cracking, and rework or replacement of the pre-production engine mount assembly if necessary), per all the actions specified in the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001, at the applicable times specified in Paragraph I., Part D., ''Compliance,'' of the service bulletin. Any replacement due to cracking must be done before further flight.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Optional Terminating Action for Follow-on Repetitive Inspections

(c) Installation of production engine mount assemblies on all four forward engine mounts ends the repetitive inspection requirements of paragraph (b) of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install an engine mount assembly having a pre-production configuration and/or part number 96042–07 on any airplane, unless the assembly has been reworked per Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise provided in this AD, the actions shall be done per Bombardier Alert Service Bulletin A84–71–06, Revision ''A,'' dated December 5, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–07, dated January 21, 2002.

Effective Date

(g) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31062 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 2002N–0370]

Neurological Devices; Classification of Human Dura Mater

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying human dura mater intended to repair defects in human dura mater into class II (special controls). This action is being taken to establish sufficient regulatory control to provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled ''Class II Special Controls Guidance Document: Human Dura Mater'' that will serve as the special control for this device.

DATES: This rule is effective January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 22, 2002 (67 FR 64835), FDA issued a proposed rule to classify human dura mater into class II based on new information regarding this device and the recommendation of the Neurological Devices Panel. FDA identified the draft guidance document entitled ''Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA'' as the proposed special control capable of providing reasonable assurance of the safety and effectiveness of the device. The device is intended to repair defects in human dura mater. FDA invited interested persons to comment on the proposed rule by January 21, 2003. FDA received one comment.

II. Summary of the Comment and FDA's Response

The comment did not express an opinion on the proposed rule. It informed FDA of new research in transgenic mice which suggests that it may be difficult to distinguish whether a patient's cause of death is related to Creutzfeldt-Jakob Disease (CJD) or variant CJD based on neuropathology. FDA appreciates receipt of the information but does not believe it affects the classification of human dura mater. The guidance document ''Class II Special Controls Guidance Document: Human Dura Mater'' recommends clinical and histopathological methods, including next of kin interviews and full brain autopsy, respectively, that are intended to identify and defer potential human dura mater donors who have either CJD or variant CJD.

III. FDA's Conclusion

Based on a review of the available information in the preamble to the proposed rule and placed on file in FDA's Division of Dockets Management (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061, Rockville, MD 20852, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the class II special controls guidance document. Following the effective date of this final classification rule, any firm submitting a premarket notification (510(k)) for human dura mater will need to address the issues covered in the class II special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA is now codifying the classification and the class II special control guidance document for human dura mater by adding § 882.5975 to the device regulations in Title 21, Code of Federal Regulations (21 CFR). For the convenience of the reader, FDA is also adding § 882.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 882.

As discussed in the preamble to the proposed rule (67 FR 64835), FDA intends to transfer the regulation of human dura mater from the Center for Devices and Radiological Health to the Center for Biologics Evaluation and Research. FDA expects this transfer will take place upon the implementation of human-cellular and tissue-based product regulations, including regulations addressing donor suitability, good tissue practices, and registration and listing. FDA has initiated rulemaking proceedings involving these products. (See 64 FR 52696, September 30, 1999; 66 FR 1507, January 8, 2001; and 66 FR 5447, January 19, 2001.) In the interim, FDA believes that regulation of dura mater as a class II device subject to general and special controls provides a reasonable assurance of its safety and effectiveness.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

FDA has also examined the impact of the rule under the Regulatory Flexibility Act. The purpose of this rule is to change the classification of human dura mater from an unclassified medical device into a class II medical device subject to special controls. As an unclassified device, this device is already subject to premarket notification and the general labeling provisions of the act. There are currently five to seven manufacturers of human dura mater medical devices. All of the firms meet the Small Business Administration's definition of a small entity (fewer than 500 employees). FDA, however, believes that manufacturers presently marketing this device already conform with many of the recommendations in the special controls guidance document. New manufacturers of human dura mater will only need to submit 510(k)s, as the statute now requires them to do, and demonstrate that they meet the recommendations of the guidance or in some way provide equivalent assurances of safety and effectiveness. In addition, biocompatibility and structural testing recommendations are eliminated from the guidance, which will decrease the premarket notification costs for manufacturers introducing new human dura mater devices into commercial distribution. The agency, therefore, certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 21 CFR Part 882

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 882.1 is amended by adding paragraph (e) to read as follows:

§ 882.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

■ 3. Section 882.5975 is added to subpart F to read as follows:

§ 882.5975 Human dura mater.

(a) *Identification.* Human dura mater is human pachymeninx tissue intended to repair defects in human dura mater.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Human Dura Mater.'' See § 882.1(e) for the availability of this guidance.

Dated: December 5, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–31174 Filed 12–17–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–057–7216e; A–1–FRL–7600–2]

Approval and Promulgation of Implementation Plans; Connecticut; Motor Vehicle Emissions Budgets for 2005 and 2007 using MOBILE6.2 for the Connecticut Portion of the New York-Northern New Jersey-Long Island Nonattainment Area and for 2007 for the Greater Connecticut Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Connecticut State Implementation Plan (SIP) for the attainment and maintenance of the one-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone submitted by the State of Connecticut. The intended effect of this action is to approve Connecticut's 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and to approve Connecticut's 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area also recalculated using MOBILE6.2. This action is being taken under the Clean Air Act.

DATES: This direct final rule will be effective February 17, 2004, unless EPA receives adverse comments by January 20, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Jeff Butensky, Environmental Planner, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1665, *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under CT–057–7216e. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

2. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking CT–057–7216d'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *conroy.david@epa.gov* please including the text ''Public comment on proposed rulemaking CT–057–7216d'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE,'' and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Please include the text ''Public comment on proposed rulemaking CT–057–7216d'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Rulemaking Information

On June 17, 2003, the Connecticut Department of Environmental Protection (CTDEP) submitted an amendment to the Connecticut State Implementation Plan (SIP) containing 2005 and 2007 motor vehicle emissions budgets recalculated using the MOBILE6.2 model for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area. This SIP revision fulfills the commitment made by the CTDEP in its February 8, 2000 SIP submittal to revise the transportation conformity budgets using EPA's MOBILE6 emissions model.[1] In addition, this SIP revision demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6.2 continue to support achievement of the rate of progress requirements and projected attainment of the one-hour ozone NAAQS for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut nonattainment area. Connecticut held a public hearing on its proposed SIP revision on May 27, 2003. Today's action approves these budgets.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

A. Background

The entire State of Connecticut is designated as nonattainment for the one-hour ozone NAAQS. Southwest Connecticut (*i.e.*, all of Fairfield County except the town of Shelton, plus the Litchfield County towns of Bridgewater and New Milford) is part of the New York-Northern New Jersey-Long Island severe ozone nonattainment area, and the remainder of Connecticut is the Greater Connecticut serious ozone nonattainment area. The CTDEP submitted attainment demonstrations for both the Southwest Connecticut and Greater Connecticut ozone nonattainment areas on September 16, 1998, and EPA published proposed rulemakings on CTDEP's attainment demonstrations on December 16, 1999. 64 FR at 70332–70364 (December 16, 1999).

EPA's December 16, 1999 proposal to approve the attainment demonstration for the Greater Connecticut area was contingent upon several issues. The issues relevant to this action were the submittal of an adequate motor vehicle emissions budget that was consistent with attainment and a commitment to revise the motor vehicle emissions budget within one year after official release of EPA's MOBILE6 emissions model. The CTDEP submitted the required motor vehicle emissions budgets (calculated using EPA's MOBILE5b emissions model) for Greater Connecticut on February 8, 2000. The motor vehicle budgets submitted for Greater Connecticut on February 8, 2000 were calculated using then-current EPA guidance. This guidance is articulated in two memoranda which detail how states should incorporate the benefits of the federal motor vehicle Tier 2 standard into their SIPs, ''Guidance on Motor Vehicle Emissions Budgets in one-hour Ozone Attainment Demonstrations,'' issued November 3, 1999, and ''One-hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking,'' issued November 8, 1999. In addition, states that have attainment demonstrations that include interim MOBILE5b-based estimates of the federal motor vehicle Tier 2 standards are required to submit motor vehicle emissions budgets using the EPA's April 2000 MOBILE5 guidance, ''MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5.''[2] EPA granted full approval to the Greater Connecticut

[1] Document titled ''Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area,'' February 8, 2000.

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (''Tier 2 standards'') for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

attainment demonstration on January 3, 2001 (66 FR 633).

For the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, EPA's December 16, 1999 rulemaking proposed to conditionally approve the ozone attainment SIP for the nonattainment area, and in the alternative, to disapprove the SIP if the specified conditions were not satisfied. The only condition of importance to today's action is the submittal of adequate MOBILE5b 2007 motor vehicle emissions budgets that are consistent with attainment, and a commitment to revise the 2007 motor vehicle emissions budgets within one year after official release of EPA's MOBILE6 emissions model. In the February 8, 2000 submittal, the CTDEP submitted revised 2007 motor vehicle emissions budgets (determined with MOBILE5b), which EPA found adequate on June 16, 2000 (65 FR 37778–37779). Connecticut also committed to revise its motor vehicle emissions budgets within one year after release of MOBILE6.[3] In addition, the CTDEP incorporated the federal motor vehicle Tier 2 standards program into the SIP and provided the necessary SIP commitments as part of revisions submitted to EPA in February 2000 and October 2001,[4] respectively. As a result of this submittal and the resolution of other issues on the attainment demonstration, EPA granted full approval of Connecticut's one-hour ozone attainment demonstrations on December 11, 2001 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area (66 FR 63921).

The SIP being approved today satisfies CTDEP's commitments to revise motor vehicle emissions budgets within one year after EPA's release of the MOBILE6 motor vehicle emissions model. EPA published the release of the MOBILE6 model in the **Federal Register** on January 29, 2002 (67 FR 4254), beginning the one-year time line for submitting revised budgets. Thus, the effective date of that **Federal Register** notice constituted the start of the one-year time period for which Connecticut was required to revise its one-hour ozone attainment demonstration SIP using the MOBILE6 model. Therefore, Connecticut was required to submit this SIP revision to EPA by January 29, 2003. EPA subsequently released updated versions of the model, and the latest model update, MOBILE6.2, was used to prepare this SIP revision.

Although not required by EPA, CTDEP is electing to replace the existing 2005 MOBILE5b budgets for Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area with MOBILE6.2 budgets. There are no applicable budget requirements for 2005 for Greater Connecticut, but the State previously had 2005 budgets approved by EPA for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area (66 FR 63921). Connecticut is only required to submit new 2007 budgets using the MOBILE6.2 model for the attainment year of 2007. Therefore, EPA's adequacy determination will only be for the revised attainment year budgets for 2007 for both the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut nonattainment area and not for the revised reasonable further progress (2005) budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area. This is consistent with EPA's approval of the previous MOBILE5 budgets which limited the adequacy process to only the revised attainment year budgets, or 2007 for both nonattainment areas in Connecticut. EPA has notified the public of Connecticut's SIP revision containing 2007 motor vehicle emissions budgets recalculated using the MOBILE6.2 model for the Connecticut portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and for the Greater Connecticut ozone nonattainment area on EPA's Office of Transportation and Air Quality Web site ''SIP Submissions Currently Under EPA Adequacy Review'' located at *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The thirty-day public comment period associated with the adequacy review process started Friday, December 5, 2003.

B. What is MOBILE6.2?

MOBILE6.2 is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. MOBILE6.2 calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, variations in temperature, humidity, fuel type, vehicle type and age distribution, and air quality programs such as inspection and maintenance, and many other variables. Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6.2 is the first major revision to MOBILE since MOBILE5a was released in 1993.

In developing mobile source emission estimates, states rely on estimates of daily vehicle miles traveled (VMT) using travel demand forecasting models which use variables such as population, housing, land use, and other relevant planning data. Resulting VMT, speed data, vehicle age distribution, speed data, road types, vehicle type data, and other data are then entered into the MOBILE6.2 model to develop on-road vehicle emission factors. More information on Connecticut's travel demand modeling is contained in the state's June 17, 2003 SIP submittal.

Transportation conformity is required under section 176(c) of the Clean Air Act. The purpose of transportation conformity is to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of a SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan. 40 CFR part 51, subpart W and part 93. The purpose of the MOBILE6.2 transportation conformity budgets being proposed for approval today is to cap the emissions resulting from Connecticut's statewide transportation improvement program (STIP) in the effort to reduce emissions and achieve the NAAQS for ground level ozone. The modeling conducted as part of the STIP must show that emissions are below these emissions budgets. This process is known as a ''conformity determination.''

C. Are the Revised Budgets Using MOBILE6.2 Consistent With Connecticut's One-Hour Attainment Demonstration?

In using MOBILE6.2 to calculate the revised budgets, states must consider whether these calculations continue to

[3] The Connecticut commitment for submitting MOBILE6 budgets within one year after is codified at 40 CFR 52.377(b) for the Greater Connecticut area and 40 CFR 52.377(c) for the Southwest Connecticut area.

[4] MOBILE5b inputs and estimates are from the previously approved SIP submittals ''Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area'' (submitted to EPA on February 8, 2000) and ''Updates to the Ozone Attainment Demonstration for the Southwest Connecticut Severe Ozone Nonattainment Area (submitted to EPA in October 2001).

support attainment of the NAAQS for ozone. EPA has articulated its policy regarding the use of MOBILE6.2 in SIP development in its ''Policy Guidance on the Use of MOBILE6.2 for SIP Development and Transportation Conformity'' [5] and ''Clarification of Policy Guidance for MOBILE6.2 in Mid-course Review Areas.'' [6] Consistent with this policy guidance, Connecticut submitted a relative reduction comparison to show that its one-hour ozone attainment demonstration SIP continues to demonstrate attainment when applying the new MOBILE6.2 budgets.

In developing the EPA approved one-hour ozone attainment demonstrations, Connecticut relied on a ''weight-of-evidence'' approach that examined photochemical grid modeling results, emission projections, and air quality data. As part of Connecticut's one-hour attainment demonstration, the level of additional emission reductions needed for attainment was determined by applying a relative emission reduction technique.[7] This relied on measured air quality data and emission estimates from 1999, along with previous photochemical grid modeling with 2007 emission estimates, to determine whether additional emission reductions were necessary to provide for a projection of attainment for Connecticut in 2007. EPA concluded that attainment could be demonstrated if emission reductions expected from the federal motor vehicle Tier 2 program were incorporated into the SIP, and Connecticut subsequently incorporated this program into the SIP as part of revisions submitted to EPA in February 2000 and October 2001, respectively.[8]

CTDEP used a similar approach to determine if the 2007 MOBILE6.2 emission projections remain consistent with the approved attainment plans. CTDEP analyzed 1999 through 2007 to compare the relative emission reductions projected by MOBILE6.2 to those projected by MOBILE5b to determine if the relative reductions estimated over the 1999–2007 period with MOBILE6.2 equal or exceed those estimates using MOBILE5b.

MOBILE6.2 generally calculates higher emission factors than MOBILE5b between the base year and the attainment year, or 1999 and 2007 for the budgets that are being approved today. As can be seen in table 1, for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, MOBILE6.2 reductions are greater than MOBILE5b for emissions of total precursors (39.7 tons per summer day (tpd) versus 26.6 tpd), VOC (18.3 tpd versus 7.9 tpd), and NO_X (21.4 tpd versus 18.7 tpd). In addition, the rate of emission reductions between the base year of 1999 and attainment year of 2007 is also greater with MOBILE6.2 than MOBILE5b for total precursor emissions (46.3% versus 44.3%) and VOC emissions (52.7% versus 44.9%); but slightly lower for NO_X emissions (41.9% versus 44.1%). Therefore, MOBILE6.2 provides an ''excess'' rate of VOC reductions that is 7.9% above what MOBILE5b provided in the approved attainment SIP. In addition, MOBILE6.2 provides a 2.2% smaller rate of NO_X reductions compared to the MOBILE5b emissions included in the approved attainment SIP.

TABLE 1.—COMPARISON OF MOBILE5B AND MOBILE6.2 EMISSION ESTIMATES: 1999–2007

	Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area			Greater Connecticut		
	VOC + NO_X	VOC	NO_X	VOC + NO_X	VOC	NO_X
MOBILE5b: 1999 (tpd)	60.0	17.6	42.4	191.7	52.3	139.4
MOBILE5b: 2007 (tpd)	33.4	9.7	23.7	109.6	30.0	79.6
M5b Reduction (tpd)	26.6	7.9	18.7	82.1	22.3	59.8
M5b % Reduction	44.3%	44.9%	44.1%	42.8%	42.6%	42.9%
MOBILE6.2: 1999 (tpd)	85.8	34.7	51.1	272.2	107.3	164.9
MOBILE6.2: 2007 (tpd)	46.1	16.4	29.7	150.3	51.9	98.4
M6.2 Reduction (tpd)	39.7	18.3	21.4	121.9	55.4	66.5
M6.2 % Reduction	46.3%	52.7%	41.9%	44.8%	51.6%	40.3%
Difference in % Reductions (M6.2 − M5b)	1.9%	7.9%	−2.2%	2.0%	9.0%	−2.6%
''Excess'' Reductions with MOBILE6.2 (after VOC for NO_X substitution at 0.83 to 0.61 ratio established by EPA method)	NA	4.9%	0.0%	NA	5.5%	0.0%

To demonstrate the net beneficial effect on ozone of the combined 7.9% ''excess'' VOC reductions and the 2.2% NO_X ''deficit,'' CTDEP applied the emission reduction factors previously approved by EPA to determine the amount of additional reductions needed in Connecticut to ensure attainment of the ozone standard. See Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area, section 3.B. at 4–7 (January 14, 2000). This method determined that emission reductions of 0.83% VOC and 0.61% NO_X resulted in an ozone air quality improvement of one ppb in the New York City modeling domain. Scaling these ''normalized'' values, the 2.2% MOBILE6.2 NO_X deficit described above can be offset by 3.0% (*i.e.*, $(0.83/0.61) \times 2.2\% = 3.0\%$ with rounding) of the 7.9% MOBILE6.2 VOC ''excess.'' [9] This substitution results in a final MOBILE6.2 VOC ''excess'' reduction of 4.9% (with a net

[5] Memorandum, ''Policy Guidance on the Use of MOBILE6.2 for SIP Development and Transportation Conformity,'' issued January 18, 2002.

[6] Memorandum, ''Clarification of Policy Guidance for MOBILE6.2 SIPs in Mid-course Review Areas,'' issued February 12, 2003.

[7] 66 FR 63921–63938 (December 11, 2001) for the New York-Northern New Jersey-Long Island nonattainment area; 66 FR 634–663 (January 3, 2001) for the Greater Connecticut area.

[8] MOBILE5b inputs and estimates are from the previously approved SIP submittals ''Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area'' (submitted to EPA on February 8, 2000) and ''Updates to the Ozone Attainment Demonstration for the Southwest Connecticut Severe Ozone Nonattainment Area (submitted to EPA in October 2001). MOBILE6.2 estimates were determined as described in the current SIP revision.

[9] Note that Connecticut's submittal indicates that the required ''offset'' for the level of NO_X reduction from the MOBILE6 model is 3.1%, not 3.0%. EPA has re-run these calculations, and we believe that the correct number is 3.0%. In either case, it is clear that the level of VOC reduction projected by the MOBILE6 model more than compensates for the ''deficit'' in NO_X reductions.

zero balance of NO_X), relative to the MOBILE5b emissions included in the approved attainment SIP. Similar calculations are summarized in Table 1 for the Greater Connecticut nonattainment area.

The methodology used in these calculations differs from the methodology provided in EPA guidance,[10] but Connecticut has provided evidence that these budgets continue to support attainment of the ozone NAAQS by 2007 in both nonattainment areas. First, to assess the relative level of reduction under the MOBILE5 model compared with the MOBILE6 model, Connecticut compared mobile source emission reductions from 1999 to 2007, the attainment year for these areas. EPA's guidance, however, recommends comparing reductions from the base year of the attainment demonstration with the attainment year. For most purposes, the base year for the attainment demonstrations in Connecticut was 1990. Nevertheless, Connecticut believes that it makes more sense to start the comparison with 1999 levels, because that was the year Connecticut assembled its attainment demonstration for EPA using a weight of evidence assessment of various emissions and air quality trends. Much of the data used in that weight of evidence assessment came from the late 1990's and made projections of attainment in 2007 by assessing how past trends in that data would likely proceed from 1999 forward. See *e.g.* the discussion of the Regional Design Value Rollback Analysis for the Connecticut Nonattainment Areas (64 FR at 70341–70342 (Greater Connecticut) and at 70359 (Southwest Connecticut) (December 16, 1999)). Connecticut and EPA effectively used 1999 as a base year for several purposes when constructing the weight of evidence analysis supporting our approval of the state's attainment demonstration. Therefore, Connecticut used 1999 as the starting point for assessing whether the relative level of reductions in mobile emissions projected using MOBILE6 still supports its attainment demonstration, since a critical step in that demonstration relied on projections from 1999 to 2007.

[10] Two Memoranda: ''Policy Guidance on the Use of MOBILE6.2 for SIP development and Transportation Conformity,'' issued January 18, 2002, and ''Clarification of Policy Guidance for MOBILE6.2 SIPs in Mid-course Review Areas,'' issued February 12, 2003.

Second, Connecticut used the factors described above to compare and offset the ''deficit'' in NO_X reductions with ''excess'' VOC reductions. EPA's guidance does not directly address the situation where the overall level of ozone precursor reductions appears to support the weight of evidence analysis underlying the attainment demonstration but there is a slight shortfall in the level of reduction for one pollutant. Connecticut has looked to an analogous exercise the State and EPA undertook to calculate how to balance between NO_X and VOC reductions when calculating emission reduction shortfalls in ozone nonattainment areas. EPA believes the State's use of these factors is a reasonable extension of that methodology, since the goal of both exercises is to compare the relative benefit in reducing ozone that results from reductions in either VOC or NO_X.

Application of this methodology provides evidence that MOBILE6.2 projects a net reduction in total ozone precursor emissions between the 1999 base year and the 2007 attainment year that are at least equivalent to the level of reduction Connecticut relied on for its attainment demonstration using MOBILE5. These excess emission reductions determined with MOBILE6.2 reaffirm that the transportation budgets developed with MOBILE6.2 are consistent with Connecticut's previously approved attainment demonstrations.

In addition to the evaluation of on-road mobile source emissions, CTDEP also reevaluated the effects on the attainment plan of recent changes to 2007 growth projections for other emission source categories (*i.e.*, point, area, and non-road mobile sources). The Connecticut Department of Labor's updated total employment projections for the manufacturing sector are actually lower than previous projections by almost five percent. In addition, population projections were also updated. When updated employment growth and population forecasts are incorporated into emission calculations,[11] overall ozone precursor emission projections for 2007 are slightly lower than those included in the previously approved attainment plan. These lower emission projections further support the attainment plan's conclusion that emission reductions included in the SIP are on target to achieve one-hour ozone attainment by 2007 in both the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut area.

Connecticut must submit a mid-course review of its attainment demonstration by December 31, 2004 to ensure that the state remains on track to attain by 2007. During that mid-course review, EPA can reconfirm that these mobile budgets continue to support Connecticut's attainment demonstration.

Lastly, to further support the approval of Connecticut's mobile source budgets, EPA supplemented Connecticut's analysis with an analysis of its own based on information provided by the CTDEP. For the entire state, we compared the relative reduction, by percentage, between the 1990 and 2007 inventories generated using the two different versions of the models to ensure that the approved 1-hour ozone attainment demonstrations for Connecticut will continue to demonstrate attainment by 2007. The methodology for this relative reduction comparison consists of comparing the revised MOBILE6 baseline and attainment case inventories, by pollutant, with the previously approved MOBILE5 inventory totals for the State of Connecticut to determine if attainment can still be predicted by the attainment date.

Table 2 below contrasts Connecticut's revised MOBILE6-based motor vehicle emissions inventories with the previously approved MOBILE5-based inventories for the two Connecticut nonattainment areas, by pollutant, expressed in units of tons per summer day (tpd). These revised inventories were developed using the latest available information including vehicle registration data, traffic data, vehicle miles traveled, and growth assumptions. Non-road emissions were calculated using the latest version of EPA's non-road model.

[11] Calculations with updated CTDOL employment projections, U.S. Census Bureau were carried out using the procedures documented in Connecticut's Post-1999 Rate-of-Progress Plan. See section 3.2 and appendix F of ''Ozone Reduction Strategy for the Southwest Connecticut Portion of the New York-New Jersey-Connecticut Severe Nonattainment Area: Post-1999 Rate-of-Progress Plan''; CTDEP; September 2001. See: *http://www.dep.state.ct.us/air2/siprac/2001/pst99tsd.pdf.*

TABLE 2.—COMPARISON OF CONNECTICUT'S MOBILE5 AND REVISED MOBILE6-BASED EMISSIONS INVENTORIES

State of Connecticut	1990 VOC (tpd)	2007 VOC (tpd)	Percent reduction	1990 NO_X (tpd)	2007 NO_X (tpd)	Percent reduction
MOBILE5b-based emissions inventory	536.3	311.1	41.99	463.6	297.2	35.88
MOBILE6.2-based revised emissions inventory	587.3	341.8	41.80	452.3	285.7	36.82
Difference in % Reductions (M6.2–M5b)	.....	.....	−0.18	.....	.....	0.94
''Excess'' Reductions with MOBILE6.2 (after NO_X for VOC substitution at 0.61 to 0.83 ratio)	.....	.....	0.0	.....	.....	0.81

This relative reduction comparison shows that the reduction in NO_X emissions, on a percentage basis, is greater in the revised MOBILE6-based inventories than in the previously approved MOBILE5 inventories. For VOC emissions, the relative reduction in the revised MOBILE6-based inventories is slightly less than in the previously approved MOBILE5 inventories. However, the ''deficit'' in VOC reductions is more than offset with the ''excess'' in NO_X reductions when the technique that Connecticut DEP used in its analysis is performed. This analysis satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2007 for Connecticut ozone nonattainment areas.

D. Are Connecticut's Motor Vehicle Emissions Budgets Approvable?

Table 3 contains Connecticut's revised budgets that EPA is approving today. These budgets were developed using the latest planning assumptions, including 2000 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. For the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, EPA is approving budgets for 2005 and 2007, and for the Greater Connecticut nonattainment area EPA is approving budgets for 2007.

TABLE 3.—MOBILE6.2 TRANSPORTATION CONFORMITY BUDGETS

Year	Connecticut portion of the New York-Northern New Jersey-Long Island non-attainment area		Greater Connecticut	
	VOC (tons/day)	NO_X (tons/day)	VOC (tons/day)	NO_X (tons/day)
2005	19.5	36.8	NA	NA
2007	16.4	29.7	51.9	98.4

As stated in section IIA above, EPA has posted an announcement on EPA's Office of Transportation and Air Quality Web site *http://www.epa.gov/otaq/transp/conform/currsips.htm,* initiating the adequacy review process for the MOBILE6.2 2007 attainment year budgets for both areas in Connecticut in accordance with EPA guidance.[12] The 2005 budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area must be approved before being used in a conformity analysis and are not subject to the adequacy process. The 2007 MOBILE6.2 attainment year budgets may be used for conformity determinations upon EPA's determination of ''adequate,'' as described in EPA guidance[13] and specified in EPA's approvals of Connecticut's attainment demonstrations.[14]

Once the MOBILE6.2 2007 attainment year motor vehicle emissions budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island are deemed adequate, transportation air quality conformity analyses, prepared with MOBILE6.2, can be evaluated in southwestern Connecticut using the SIP-approved MOBILE5b 2005 and the MOBILE6.2 2007 budgets for the emission budget tests.

The MOBILE6.2 budgets for 2005 and 2007 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and for 2007 for the Greater Connecticut nonattainment area will be approved effective 60 days from today. Once the MOBILE6.2 budgets are approved, all future transportation conformity analyses in Connecticut will be required to demonstrate conformity with the new MOBILE6.2 budgets.

III. Final Action

EPA is approving Connecticut's revision submitted on June 17, 2003 containing 2005 and 2007 motor vehicle emissions budgets using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 budgets for the Greater Connecticut nonattainment area.

The EPA is publishing this action without a prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be

[12] Memorandum, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' issued May 14, 1999. A copy of this memorandum cab be found on EPA's Web site at *www.epa.gov/otaq/transp/tranqconf.htm.*

[13] Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity; dated January 18, 2002; see *http://www.epa.gov/otaq/models/mobile6/m6policy.pdf.*

[14] 66 FR 63921–63938; (December 11, 2001) (see page 63923 for a discussion regarding the MOBILE6 conformity budget adequacy determination for the Southwest Connecticut area); 66 FR 633–663 (January 3, 2001) (see page 635 for a discussion regarding the MOBILE6 conformity budget adequacy determination for the Greater Connecticut area).

filed. This rule will be effective February 17, 2004 without further notice unless the Agency receives relevant adverse comments by January 20, 2004.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If EPA receives no such comments, the public is advised that this rule will be effective on February 17, 2004 and EPA will take no further action on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal Government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2004. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 10, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.377 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(b) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000 and June 17, 2003. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Greater Connecticut serious ozone nonattainment area. The revision establishes an attainment date of November 15, 2007 for the Greater Connecticut serious ozone nonattainment area. Connecticut commits to conduct a mid-course review to assess modeling and monitoring progress achieved toward the goal of attainment by 2007, and submit the results to EPA by December 31, 2004. The June 17, 2003 revision

establishes MOBILE6-based motor vehicle emissions budgets for 2007 of 51.9 tons per day of volatile organic compounds (VOC) and 98.4 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Greater Connecticut serious ozone nonattainment area.

(c) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and June 17, 2003. These revisions are for the purpose of satisfying the rate of progress requirement of section 182 (c)(2)(B) through 2007, and the contingency measure requirements of section 182 (c)(9) of the Clean Air Act, for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The October 15, 2001 revision establishes motor vehicle emissions budgets for 2002 of 15.20 tons per day of VOC and 38.39 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The June 17, 2003 revision establishes motor vehicle emissions budgets for 2005 of 19.5 tons per day of VOC and 36.8 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area.

(d) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000, October 15, 2001 and June 17, 2003. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The June 17, 2003 revision establishes MOBILE6-based motor vehicle emissions budgets for 2007 of 16.4 tons per day of VOC and 29.7 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. Connecticut commits to adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit additional restrictions on VOC emissions from mobile equipment and repair operations; and requirements to reduce VOC emissions from certain consumer products. Connecticut also commits to conduct a mid-course review to assess modeling and monitoring progress achieved toward the goal of attainment by 2007, and submit the results to EPA by December 31, 2004.

[FR Doc. 03–31234 Filed 12–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 31

Tax Refund Offset

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is amending its tax refund offset regulation to reflect amendments to 31 U.S.C. 3720A made by tax refund offset provisions of the Debt Collection Improvement Act of 1996 (DCIA). The amended regulation changes the process by which HHS certifies and refers past-due debt to the Department of Treasury for tax refund offset to satisfy debt owed to the HHS.

EFFECTIVE DATE: December 18, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Associate General Counsel, General Law Division, Office of the General Counsel, Cohen Building, Room 4760, Washington DC 20201, 202–619–0150.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the tax refund offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358, codified at 31 U.S.C. 3720A. As required by the tax refund offset provisions of the DCIA, a Federal agency owed a past-due debt must notify the Secretary of the Treasury of such debt for collection by tax refund offset in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. The Treasury Final Rule, as amended, is published in section 285.2 of title 31 of the Code of Federal Regulations.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2, the rule establishes the rules and procedures for certifying and referring a past-due debt to FMS for tax refund offset, correcting and updating referral information transmitted to FMS, and providing the debtor with written notice at least 60 days before the Department refers a debt to FMS. This written notice informs the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of the Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Rules and Procedures

Except for minor changes to make the provisions agency-specific, the final rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, the final rule establishes HHS rules and procedures for:

1. Certifying and referring a past-due debt to FMS for tax refund offset.
2. Correcting and updating referral information transmitted to FMS.
3. Providing the debtor with written notice at least 60 days before referring a debt to FMS. This written notice must inform the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of the Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Analysis of and Responses to Public Comments

No public comments were received.

Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review) and

the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354), the Unfunded Mandated Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (August 1999, Federalism).

Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the final rule is consistent with the principles set forth in the Order, and we find that the final rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule applies only to individuals with past-due debts owed to the United States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure of in any 1 year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the final rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this final rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no Federalism implications, a Federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this final rule will impose no new reporting or record-keeping requirements on any member of the public.

List of Subjects in 45 CFR Part 31

Administrative practice and procedure, Taxes, Claims, and Debts.

■ For the reasons set forth in the preamble, HHS amends 45 CFR Subtitle A as follows: Revise part 31 to read as follows:

PART 31—TAX REFUND OFFSET

Sec.

Authority: 31 U.S.C. 3720A, 31 CFR 285.2, E.O. 12866, E.O. 13258.

§ 31.1 Purpose and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for submitting past-due, legally enforceable debts to the Department of the Treasury for collection by tax refund offset.

(b) *Authority.* These standards and procedures are authorized under the tax refund offset provision of the Deficit Reduction Act of 1984, as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a past-due non-tax debt owed to the United States, and to all officers or employees of the Department authorized to collect such debt. This part does not apply to any debt or claim owed to the Department of Health and Human Services by another Federal agency.

(2) Nothing in this part precludes the Department from pursuing other debt collection procedures, including administrative wage garnishment under part 32 of this title, to collect a debt that has been submitted to the Department of the Treasury under this part. The Department may use such debt collection procedures separately or in conjunction with the offset collection procedures of this part.

§ 31.2 Definitions.

In this part, unless the context otherwise requires:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or *claim* means an amount of money, funds, or other property determined by an appropriate official to be owed to the United States from any individual, entity, organization, association, partnership, corporation, or State or local government or subdivision, except another Federal agency.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Department means the Department of Health and Human Services, and each of its Operating Divisions and regional offices.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this regulation. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau within the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Legally enforceable means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Operating division means each separate component, within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, and the Office of the Secretary.

Past-due debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Secretary means the Secretary of the Department of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed to the United States by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402 for any liabilities for any tax on the part of the person who made the overpayment.

§ 31.3 General rule.

(a) Any past-due, legally enforceable debt of at least $25, or such other minimum amount as determined by the Secretary of the Treasury, shall be submitted to FMS for collection by tax refund offset.

(b) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted by the Department under this part. A match will occur when the taxpayer identification number and name of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due legally enforceable debt. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

§ 31.4 Certification and referral of debt.

(a) *Certification.* The Secretary shall certify to FMS that:

(1) The debt is past-due and legally enforceable in the amount submitted and that the Department will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred within ten (10) years after the Department's right of action accrues;

(3) The Department has made reasonable efforts to obtain payment of the debt, and has:

(i) Submitted the debt to FMS for collection by offset and complied with the administrative offset provision of 31 U.S.C. 3716(a) and related regulations, to the extent that collection by administrative offset is not prohibited by statute;

(ii) Notified, or made a reasonable attempt to notify, the debtor that the debt is past-due, and unless paid within 60 days of the date of the notice, the debt may be referred to Treasury for tax refund offset. For purposes of this regulation, the Department has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the Department's records related to the debt. If address validation is desired or necessary, the Department may obtain information from the IRS pursuant to 26 U.S.C. 6103(m)(2)(4) or (5).

(iii) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(iv) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(4) The debt is at least $25.

(b) *Referral.* (1) The Secretary shall submit past-due, legally enforceable debt information for tax refund offset in the time and manner prescribed by the Department of the Treasury.

(2) For each debt referred under this part, the Secretary will include the following information:

(i) The name and taxpayer identifying number, as defined in 26 U.S.C. 6109, of the debtor responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due; and

(iv) The designation of the Department referring the debt.

(c) *Correcting and updating referral.* (1) After referring a debt under this part, the Secretary shall promptly notify the Department of the Treasury if:

(i) An error was made with respect to information transmitted to the Department of the Treasury;

(ii) The Department receives a payment or credits a payment to the account of a debtor referred for tax refund offset; or

(iii) The debt amount is otherwise incorrect.

(2) The Department shall provide the certification required under paragraph (a) of this section for any increases to amounts owed.

(d) *Rejection of certification.* If the Department of Treasury rejects a certification because it does not comply with the requirements of paragraph (a) of this section, upon notification of the rejection and the reason(s) for rejection, the Secretary will resubmit the debt with a corrected certification.

§ 31.5 Notice.

(a) *Requirements.* If not previously included in the initial demand letter provided under section 30.11, at least 60 days before referring a debt for tax refund offset, the Secretary shall mail, by first class mail to the debtor's last known address, written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The determination that the debt is past-due and legally enforceable, and unless paid within 60 days after the date of the notice, the Secretary intends to enforce collection by referring the debt the Department of the Treasury for tax refund offset; and

(3) The debtor's rights to:

(i) Inspect and copy Department records relating to the debt;

(ii) Enter into written agreement to repay the amount of the debt;

(iii) Request review and present evidence that all or part of the debt is not past-due or not legally enforceable.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes

§ 31.6 Review of Departmental records.

(a) To inspect or copy Departmental records relating to the debt, the debtor must send a written request to the address designated in the notice described in section 31.5. The request must be received by the Department within 60 days from the date of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the debtor of the location and time when the debtor may inspect and copy such records. If the debtor is unable to personally inspect such records as the result of geographical or other constraints, the Department will arrange to send copies of the records to the debtor.

§ 31.7 Review of a determination that a debt is past-due and legally enforceable.

(a) *Requesting a review.* (1) If the debtor believes that all or part of the debt is not past-due or not legally enforceable, the debtor may request a review by the Department by sending a written request to the address provided in the notice. The written request must be received by the Department within 60 days from the date of the notice or, if the debtor has requested to inspect the records, within 30 days from the debtor's inspection of the records or the Department's mailing of the records under section 31.6(b), whichever is later.

(2) The request for review must be signed by the debtor, state the amount disputed, and fully identify and explain the evidence that the debtor believes supports the debtor's position. The debtor must submit with the request any documents that the debtor wishes to be considered, or the debtor must state in the request that additional information will be submitted within the above specified time period.

(3) Failure to timely request a review will be deemed an admission by the debtor that the debt is past-due and legally enforceable, and will result in a referral of the debt to the Department of the Treasury without further action.

(b) *Review.* Upon the timely submission of evidence by the debtor, the Department shall review the dispute and shall consider its records and any documentation and evidence submitted by the debtor. The Department shall make a determination based on the review of the written record, and shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(c) A debt that previously has been reviewed pursuant to this part, or that has been reduced to a judgment, will not be reconsidered under this part unless the evidence presented by the debtor disputes payments made or events occurring subsequent to the previous review or judgment.

Dated: September 22, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–31043 Filed 12–17–03; 8:45 am]

BILLING CODE 4150–26–P

Proposed Rules

Federal Register
Vol. 68, No. 243
Thursday, December 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–106–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. We also propose to recognize areas in Peru as free from the South American cucurbit fly. These actions would provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before February 17, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–106–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–106–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–106–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

At the request of various importers and foreign ministries of agriculture, we propose to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under certain conditions, for importation into the United States. We also propose to list certain fruits and vegetables that have been imported into the United States under a permit without being specifically listed in the regulations to improve the transparency of our regulations.

The fruits and vegetables referred to in this document would have to be imported under a permit and would be subject to the requirements in § 319.56–6 of the regulations. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry into the United States, must be inspected; they are also subject to disinfection at the port of first arrival if an inspector requires it. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated.

Some of the fruits and vegetables proposed for importation would have to meet other special conditions. The proposed conditions of entry, which are discussed below, appear adequate to prevent the introduction and spread of quarantine pests through the importation of these fruits and vegetables.

We have prepared a pest risk assessment or, in two cases, a decision sheet, for each of the fruits and vegetables that we propose to add, unless we have allowed their entry previously under a permit. Copies of the pest risk assessments and decision sheets are available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We also propose to make other amendments to update and clarify the regulations and improve their effectiveness. Our proposed amendments are discussed below by topic.

Inspected and Subject to Disinfection

Section 319.56–2t lists fruits and vegetables that may be imported into the United States upon inspection and subject to disinfection. We propose to amend that list to include additional fruits and vegetables from certain countries; some of the fruits and vegetables would be added in response to requests that we have received, while others have been imported into the United States under a permit but are not listed in the regulations. We also propose to make miscellaneous, nonsubstantive changes to § 319.56–2t. All of these proposed changes are discussed below.

African Horned Cucumber From Chile

We propose to amend § 319.56–2t to allow the entry of the African horned cucumber (*Cucumis metuliferus*) fruit from Chile. The pest risk assessment indicates that there are no quarantine pests associated with the African horned cucumber fruit from Chile that are likely to follow the import pathway. Therefore, we believe that the African horned cucumber from Chile may be imported into the United States under the requirements in § 319.56–6. The pest

risk assessment was limited to the continental United States. Therefore, we would require African horned cucumber from Chile to be shipped in boxes labeled ''Not for importation or distribution in HI, PR, VI, or Guam.''

Annona spp. from Grenada

We propose to amend § 319.56–2t to allow the entry of commercial fruit shipments of cherimoya (*Annona cherimola*), soursop (*A. muricata*), custard apple (*A. reticulata*), sugar apple (*A. squamosa*), and atemoya (*A. squamosa* × *A. cherimola*) into the United States from Grenada.

The Government of Grenada requested that we authorize the importation of these commodities several years ago, before we routinely prepared pest risk assessments according to the guidelines provided by the Food and Agriculture Organization and the North American Plant Protection Organization. At that time, we prepared decision sheets. Decision sheets contain relatively the same information that is contained in modern pest risk assessments, but without the standardized format.

The decision sheet identified three internal feeders as quarantine pests in the West Indies: *Bephratelloides cubensis, Talponia batesi,* and *Cerconota anonella.* Because of the possibility that these internal feeders may have existed in Grenada, we did not issue a permit to allow the importation of *Annona* spp. fruit. Subsequently, Grenada informed us that they did not have those pests. We agreed to reconsider their import request if a survey determined that the internal feeders were indeed not present in *Annona* spp. fruit grown in Grenada. Grenada conducted a 3-year survey for the internal feeders and sampled more than 16,000 fruits, and no internal feeders or quarantine pests were found. In addition to approving the survey protocol, the Animal and Plant Health Inspection Service (APHIS) periodically observed the survey. More information on the survey and copies of the report may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We would limit imports of *Annona* spp. fruit to commercial shipments because produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Based on the survey results and the decision sheet, we believe that restricting imports of *Annona* spp. fruit to commercial shipments and requiring inspection at the port of first arrival would be adequate to mitigate any pest risks. Therefore, we propose to list *Annona* spp. fruits from Grenada in § 319.56–2t.

Fruits and Vegetables From Mexico

The regulations in § 319.56–2(e) provide that any fruit or vegetable, except those otherwise restricted, may be imported under permit if APHIS is satisfied that the fruit or vegetable meets one of several conditions:

(1) The fruit or vegetable is not attacked in the country of origin by quarantine pests.

(2) It has been treated or is to be treated for all quarantine pests in the country of origin, in accordance with conditions and procedures that may be prescribed by the Administrator.

(3) It is imported from a definite area or district in the country of origin that is free from all quarantine pests that attack the fruit or vegetable and its importation is in compliance with the criteria of § 319.56–2(f).

(4) It is imported from a definite area or district of the country of origin that is free from quarantine pests that attack the fruit or vegetable and the criteria of § 319.56–2(f) are met with regard to those quarantine pests, provided that all other quarantine pests that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator.

Prior to 1992, APHIS did not specifically amend the regulations to list those fruits and vegetables for which we issued a permit after determining that the fruit or vegetable was eligible for entry under the regulations in § 319.56–2(e). However, in 1992, in an effort to increase transparency, we changed our approach and began to amend the regulations to specifically list all newly eligible fruits and vegetables (*i.e.*, those that were not previously eligible under a specific administrative instruction or imported under permit in accordance with § 319.56–2(e)). In most cases, we have not amended the regulations to list the fruits and vegetables that were allowed entry exclusively under permit prior to our decision to specifically list the commodities in the regulations.

In this document, we propose to list the following fruits and vegetables in § 319.56–2t. These fruits and vegetables, which we determined meet the criteria of § 319.56–2(e)(4), have been imported into the United States from Mexico under permit since before 1992.

Common name	Botanical name	Plant part(s)
Allium	*Allium spp*	Whole plant.
Asparagus	*Asparagus officinalis*	Whole plant.
Beet	*Beta vulgaris*	Whole plant.
Carrot	*Daucus carota*	Whole plant.
Coconut	*Cocos nucifera*	Fruit without husk.
Eggplant	*Solanum melongena*	Whole plant.
Grape	*Vitis* spp	Fruit, cluster, leaves.
Jicama	*Pachyrhizus tuberosus*	Whole plant.
Lemon	*Citrus limon*	Fruit.
Lime, sour	*Citrus aurantiifolia*	Fruit.
Parsley	*Petroselinum crispum*	Whole plant.
Pineapple	*Ananas comosus*	Fruit.
Prickly-pear pad	*Opuntia* spp	Pad.
Radish	*Raphanus sativus*	Whole plant.
Tomato	*Lycopersicon lycopersicum*	Whole plant.
Tuna	*Opuntia* spp	Fruit.

In addition, although the flower of banana (*Musa* spp.) and the inflorescence of cucurbits (*Cucurbitaceae*) are currently listed in § 319.56–2t as admissible plant parts from Mexico, the fruit of banana and the flower and fruit of cucurbits have been admissible as well under permit. Therefore, we propose to amend the existing entries for bananas and cucurbits from Mexico so that all admissible plant parts of those commodities are listed in § 319.56–2t.

While a few quarantine pests have been detected on these particular fruits and vegetables during inspection at the ports, they have been eliminated from the fruit or vegetable by treatment or other procedures. Therefore, we believe that these fruits and vegetables, or plant parts, should be listed in § 319.56–2t so that the regulations specifically indicate that these commodities may be imported from Mexico. In accordance with § 319.56–6, these fruits and vegetables would continue to be inspected at the port of first arrival and, if required by an inspector, disinfected at the port of first arrival.

Coconut Fruit With Milk and Husk From Mexico

In 1989, we prepared a decision sheet in response to Mexico's request to export coconut fruit with milk and husk to the United States. Because we identified two quarantine pests of concern (the red ring nematode [*Rhadinaphelenchus cocophlus*] and lethal yellowing disease), we denied the request.

Since that time, however, we have determined that the risk associated with red ring nematode is low. In 1992, we amended 7 CFR 319.37–5(g) to allow seed coconuts to be imported into the United States from Costa Rica, where the red ring nematode is also known to occur, since the risk associated with introducing red ring nematode in seed coconuts was determined to be low. Prior to that amendment, the importation of seed coconut was allowed only from Jamaica, where the red ring nematode is not known to occur. Given that the risk associated with the red ring nematode is the same for seed coconuts and coconuts with milk and husk, and that seed coconut from Costa Rica has been successfully imported into the United States for over a decade, we have reconsidered Mexico's request and propose to allow coconut fruit with milk and husk to be imported into the United States from Mexico if inspected at the port of first arrival in accordance with § 319.56–6. Because the risk associated with the red ring nematode is low, we believe that inspection at the port of first arrival is sufficient to mitigate the risk.

To mitigate the risk associated with lethal yellowing disease, we propose to allow coconut fruit with milk and husk to be imported into the United States from Mexico under conditions similar to the existing conditions for the importation of seed coconuts from Costa Rica and Jamaica. Seed coconuts imported into the United States from Costa Rica or Jamaica must be of either the Malayan dwarf variety or the Maypan variety, which are resistant to lethal yellowing disease. The seed coconuts must be accompanied by a phytosanitary certificate which declares that the coconuts are either the Malayan dwarf variety or the Maypan variety.

Therefore, we are proposing to require that the coconut fruit with milk and husk be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Mexico with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F_1 hybrid, Malayan Dwarf×Panama Tall), based on verification of the parent stock. Inspection at the port of entry would further mitigate the risk associated with lethal yellowing disease. We believe that these proposed conditions are adequate to prevent the introduction of the quarantine pests of concern. Therefore, we propose to list coconut fruit with milk and husk from Mexico in § 319.56–2t.

Pitaya From Mexico

Based on a pest risk assessment conducted for pitaya from Mexico that identified the pests of concern as the Mediterranean fruit fly (Medfly, *Ceratitis capitata*), fruit flies of the genus *Anastrepha,* gray pineapple mealybug (*Dymicoccus neobrevipes*), and passionvine mealybug (*Planococcus minor*), we propose to allow the entry of pitaya from Mexico only under certain conditions.

In addition to requiring that pitaya from Mexico be subject to inspection and disinfection at the port of entry, we would require that the pitaya be grown in an area that has been recognized as a fruit fly-free area. The regulations in § 319.56–2(h) list the municipalities in Mexico that APHIS has determined meet the criteria of § 319.56–2(e) and (f) with regard to freedom from the Medfly and fruit flies of the genus *Anastrepha*.

The fruit would have to be accompanied by a phytosanitary certificate issued by Mexico's NPPO declaring that the fruit originated in an area designated in § 319.56–2(h) as free from pests and, upon inspection, was found free of *D. neobrevipes* and *P. minor*. These additional conditions would be necessary to assure us that the product originated in a fruit fly-free area and was inspected and found free of the specified mealybugs.

Because the pest risk assessment was limited to the continental United States, we would require pitaya from Mexico to be shipped in boxes labeled ''Not for importation or distribution in HI, PR, VI, or Guam.''

We believe that these proposed conditions are adequate to prevent the introduction of the quarantine pests of concern. Therefore, we propose to list pitaya from Mexico in § 319.56–2t.

Other Amendments to § 319.56–2t

In many cases, the entries for specific fruits and vegetables in the table in § 319.56–2t include additional conditions, such as restrictions on the distribution of the fruit or vegetable or a requirement that the fruit or vegetable originate in a pest-free area and be so certified on a phytosanitary certificate. We propose to remove those additional conditions from the table and place them in a new paragraph (b) in § 319.56–2t. In the table, the entries in which the additional conditions had appeared would instead include a reference to the paragraph or paragraphs in the new paragraph (b) where the applicable conditions would appear. We believe this reorganization of the information contained in the table would make the table easier to read and use and would eliminate the need to repeat the same conditions multiple times when those conditions apply to more than one fruit or vegetable.

In order to minimize the number of restrictions in the proposed new paragraph (b), we would state certain requirements more generally. For instance, rather than stating that a phytosanitary certificate must be issued by the NPPO of a specific country, we would state that the phytosanitary certificate must be issued by the NPPO of the country of origin. Because the term ''country of origin'' is not defined in the regulations, we propose to add a definition of the term ''country of origin'' in § 319.56–1. The term ''country of origin'' would be defined as ''Country where the plants from which the plant products are derived were grown,'' which is consistent with the definition provided in the standards of the International Plant Protection Convention of the United Nations' Food and Agriculture Organization.

The entries for some of the fruits and vegetables in the current regulations specify that the commodity may not be imported into or distributed within

certain areas. For example, papaya from Guatemala is prohibited entry into Hawaii due to the papaya fruit fly, and cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.'' However, for other commodities, such as dasheen from Indonesia, the required statement refers only to distribution (*i.e.*, the statement does not refer to both importation and distribution). For consistency, we would specify that the importation into, as well as the distribution within, certain areas is prohibited.

Under § 319.56–2t, lucuma, mountain papaya, and sand pear from Chile may be imported from a Medfly-free area. However, the regulations do not specify that a phytosanitary certificate declaring that the commodity was grown in a Medfly-free area must accompany the shipment. We propose to add that requirement for those commodities.

We also propose to make grammatical changes and updates throughout the list of fruits and vegetables. The footnote for Haiti concerning Executive Order 12779 would be removed because that Executive order was revoked on October 16, 1994 (59 FR 52403, published October 18, 1994). The footnote requiring that no green may be visible on the shoot of asparagus from Austria would be removed and added to the entry for asparagus from Austria. We would also amend the entry for watermelon from Spain by changing the scientific name provided for watermelon from *Citrullus vulgaris* to *C. lanatus. C. lanatus* is the most current scientific name for watermelon, and *C. vulgaris* is a synonym.

Melon and Watermelon From Certain Countries in South America

We propose to amend the regulations to allow the entry of commercial shipments of watermelon and several varieties of melon (*Cucumis melo* L. subsp. *melo*) into the United States from Peru. The specific varieties of melon that would be considered for importation include cantaloupe, netted melon (muskmelon, nutmeg melon, and Persian melon), vegetable melon (snake melon and oriental pickling melon), and winter melon (honeydew and casaba melon).

At the request of the Government of Peru, we conducted a pest risk assessment for melon and watermelon from Peru. In that assessment, we identified the pests of concern as the South American cucurbit fly (*A. grandis*) and the gray pineapple mealybug. We propose to allow the entry of melon and watermelon from Peru only under certain conditions to prevent the introduction into the United States of the South American cucurbit fly and the gray pineapple mealybug. These proposed conditions, which are discussed below, are similar to the existing conditions under which certain melon and watermelon may be imported from Ecuador (§ 319.56–2y) and from Brazil and Venezuela (§ 319.56–2aa).

The melon and watermelon would have to be grown in areas of Peru considered by APHIS to be free of the South American cucurbit fly. Peru recently provided APHIS with fruit fly survey data that demonstrate that the Departments of Lima, Ica, Arequipa, Moquegua, and Tacna meet the criteria for freedom in § 319.56–2(e) and (f) relative to the South American cucurbit fly. (The survey data is available upon request from the person listed under **FOR FURTHER INFORMATION CONTACT**.) Therefore, we propose to consider those areas as free of the South American cucurbit fly in Peru and to list them as such.

In addition, shipments of melon and watermelon would have to be accompanied by a phytosanitary certificate issued by the Peruvian NPPO that includes a declaration that the fruit was grown in an area recognized to be free of the South American cucurbit fly, and upon inspection, was found free of the gray pineapple mealybug. We would also specify in the regulations that only commercial shipments of melon and watermelon from Peru may be imported, given that, as discussed previously with respect to *Annona* spp. fruit from Grenada, produce grown commercially is less likely to be infested with plant pests than noncommercial shipments.

The pest risk assessment was limited to the continental United States. Therefore, we would require melon and watermelon from Peru to be shipped in boxes labeled ''Not for distribution in HI, PR, VI, or Guam.'' All shipments of melon and watermelon would have to be labeled in accordance with § 319.56–2(g), which states, in part, that the box of fruit imported into the United States must be clearly labeled with the name of the orchard or grove of origin, or the name of the grower; and the name of the municipality and State in which it was produced; and the type and amount of fruit it contains.

We believe that the above conditions would be adequate to guard against the introduction of quarantine pests into the United States with melon and watermelon imported from Peru.

As noted previously, the requirements for cantaloupe and watermelon from Ecuador are in § 319.56–2y, and the requirements for melons and watermelon from Brazil and Venezuela are in § 319.56–2aa. Because these sections are similar, we propose to combine them into a single section, which would also contain the requirements described above for melons and watermelon from Peru. The section would be entitled ''Conditions governing the entry of melon and watermelon from South America.''

Specific reference to each country's agricultural department would be changed to the more general reference of the country's NPPO, thus avoiding the need to amend the regulations should the specific name of the NPPO change. In § 319.56–2y(a)(2), ''South American cucurbit fruit fly'' would be corrected to ''South American cucurbit fly (*Anastrepha grandis*).'' The requirement for phytosanitary certificates for cantaloupe, honeydew melon, and watermelon from Brazil and Venezuela, which would be moved from § 319.56–2aa(a)(2) to § 319.56–2y(b)(1) for Brazil and § 319.56–2y(c)(1) for Venezuela, would be amended to modify the requirement for the additional declaration. Rather than requiring that the declaration indicate that the cantaloupe or melons were grown in an area recognized to be free of the South American cucurbit fly, we would replace the terms ''cantaloupe or melons'' with the more general term ''fruit.'' Because we are combining two sections into a single section, changes such as updating references to ''this section'' to read ''this paragraph'' would be necessary. In addition, we would make other minor, nonsubstantive grammatical and style changes for consistency.

Watermelon, Squash, Cucumber, and Oriental Melon From the Republic of Korea

We propose to allow watermelon, squash (*Curcurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*C. melo*) to be imported into the United States from the Republic of Korea under certain conditions, which would be set forth in § 319.56–2aa. (As discussed above, the current § 319.56–2aa would be combined with § 319.56–2y.) These fruits can be the host of several quarantine pests, including the pumpkin fruit fly (*Bactrocera depressa*), the cotton caterpillar (*Diaphania indica*), and the Asian corn borer (*Ostrinia furnacalis*), which were identified as pests with high pest-risk potential in the pest risk assessment. The cucumber green mottle mosaic virus was identified as a quarantine pest with medium pest-risk potential in the pest risk assessment.

We believe that the following conditions would guard against the

entry of the specified quarantine pests in shipments of watermelon, squash, cucumber, and oriental melon imported from the Republic of Korea into the United States:

Condition	Quarantine pest to which it applies
The watermelon, squash, cucumber, and oriental melon must be grown in pest-proof greenhouses registered with the Republic of Korea's NPPO.	*B. depressa, D. indica, O. furnacalis.*
The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.	*B. depressa, D. indica, O. furnacalis,* cucumber green mottle mosaic virus.
The NPPO must set and maintain fruit fly traps in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.	*B. depressa.*
The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.	*B. depressa.*
The fruit may be shipped only from December 1 through April 30	*B. depressa.*
Each shipment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: ''The regulated articles in this shipment were grown in registered greenhouses as specified by 7 CFR 319.56–2aa''.	*B. depressa, D. indica, O. furnacalis,* cucumber green mottle mosaic virus.
Each shipment must be protected from pest infestation from harvest until export. Newly harvested fruits must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting, in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the shipment arrives at the port in the United States.	*B. depressa, D. indica, O. furnacalis.*

Grapes from the Republic of Korea

We propose to allow the importation of grapes (*Vitis* spp.) into the United States from the Republic of Korea under certain conditions that would be set forth in a new § 319.56–2ll. The quarantine pests of concern for grapes grown in the Republic of Korea that were rated ''high'' in the pest risk assessment are the yellow peach moth (*Conogethes punctiferalis*), grapevine moth (*Eupoecilia ambiguella*), leaf-rolling torix (*Sparganothis pilleriana*), apple heliodinid (*Stathmopoda auriferella*), and the plant pathogenic fungus *Monilinia fructigena.* Another quarantine pest of concern is the moth *Nippoptilia vitis,* which was rated ''medium'' in the pest risk assessment. We propose the following phytosanitary measures to guard against the entry of quarantine pests in shipments of grapes imported from the Republic of Korea into the United States:

(1) The fields where the grapes are grown must be inspected during the growing season by the NPPO. The NPPO must inspect 250 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(2) If evidence of *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella,* or *M. fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(3) Fruit must be bagged from the time the fruit sets until harvest.

(4) Each shipment must be inspected by NPPO before export. For each shipment, NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella, M. fructigena,* and *N. vitis.*

We believe that these proposed growing, inspection, and shipping requirements would be adequate to prevent the introduction of quarantine pests into the United States with grapes imported from the Republic of Korea.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to such disinfection at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. We also propose to recognize areas in Peru as free from the South American cucurbit fly. These actions would provide the United States with additional kinds and

sources of fruits and vegetables while continuing to provide protection against the introduction and spread of quarantine pests.

Availability of and Request for Production and Trade Data

For some of the commodities proposed for importation into the United States in this document, data on the levels of production are unavailable for a number of reasons. Some of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States. Generally, statistical data are less available for commodities produced in small quantities when compared to a country's more widely or commercially produced commodities. The uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States increases the difficulty in obtaining estimates of the potential volume of commodities exported from foreign countries to the United States.

Therefore, we are requesting the public to provide APHIS with any available data regarding the production or trade of *Annona* spp. in the United States and Grenada and pitaya in the United States and Mexico. These data will assist us in further assessing the effects that allowing the importation of these commodities could have on U.S. producers or consumers.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small. Potential economic effects that could occur if this proposal is adopted are discussed below by commodity and country of origin.

African horned cucumber from Chile. We propose to amend the regulations to allow the entry of African horned cucumber from Chile. African horned cucumber is a specialty crop that is grown in small quantities. Less than 20 acres of the fruit are cultivated in California; and less than 10 acres in Region V (Olmue) and Region X (Osorno) of Chile have been cultivated since 1996. Approximately 32,000 pounds of fruit are expected to be shipped to the United States annually from March to May. There is no reason to believe that allowing imports of African horned cucumber from Chile would have any significant economic impact on U.S. entities. In addition, we believe that U.S. consumers of African horned cucumber would benefit from the increase in its supply and availability.

Annona spp. from Grenada. In this document, we propose to allow the entry of commercial fruit shipments of cherimoya, soursop, custard apple, sugar apple, and atemoya, which are species of *Annona,* into the United States from Grenada. In the United States, *Annona* spp. are apparently a specialty crop produced on a small scale mainly in southern California; thus no data on the U.S. production of *Annona* spp. are available. Although no separate data are available on the production and trade of *Annona* spp. from Grenada, data may have been included with the production of all apples. From 2001 to 2003, Grenada produced an average of 533 metric tons of apples. In addition, *Annona* spp. exports may be included under the category of ''apples, not elsewhere specified,'' which includes wild apples. The 3-year average for exports of apples, not elsewhere specified, from Grenada is 5 metric tons. We believe any exports to the United States would be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers. In addition, we believe that U.S. consumers of *Annona* spp. would benefit from the increase in its supply and availability.

Fruit and vegetables from Mexico. We propose to specifically list *Allium* spp., asparagus, banana, beets, carrots, coconut fruit without husk, cucurbits, eggplant, grape, jicama, lemon, sour lime, parsley, pineapple, prickly pear pads, radish, tomato, and tuna as admissible fruits and vegetables from Mexico. Because these fruits and vegetables are admissible into the United States from Mexico under permit, specifically listing these commodities in the regulations would not have any economic effect on U.S. producers, whether small or large, or consumers. While production and trade data are not available for jicama, prickly pear, and tuna from Mexico or the United States, data are shown for the other commodities, as available, in table 1. The data provided in table 1 are based on either a 2- or 3-year average. The averages presented for most U.S. and Mexican production and trade, as well as for tomato exports from Mexico, are for the 3-year period of 2000, 2001, and 2002. A 2-year average for 2000 and 2001 is given for exports from Mexico (except tomatoes), U.S. production of parsley and beets, and U.S. imports of parsley and cucurbits.

TABLE 1.—U.S. AND MEXICAN PRODUCTION AND TRADE DATA (IN METRIC TONS) OF FRUITS AND VEGETABLES

Commodity	U.S. production	U.S. imports from all countries	U.S. imports from Mexico	Mexican production	Mexican exports
Allium spp.:					
Shallot and green onion	444,429	257,784	159,953	1,021,605	599,491
Garlic	258,680	37,806	14,776	50,894	27,544
Leek and other alliaceous vegetables	(1)	3,040	2,752	(1)	87,455
Asparagus	103,060	75,086	38,231	57,545	44,378
Banana	12,850	4,232,383	74,560	1,961,201	126,368
Beets	101,738	20,341	15,254	(1)	775,100
Carrot	1,913,700	85,037	23,508	358,054	201,944
Coconut	0	63,075	4,854	1,058,667	87,584
Cucurbits:					
Melon and watermelons	2,969,250	882,350	363,902	1,469,700	572,529
Cucumbers and gherkins	1,078,800	15,035	1,924	416,667	7,880
Pumpkins, squash, and gourds	761,253	223,697	148,343	550,000	372,294
Eggplant	77,290	40,233	36,863	59,000	135,697
Grape	6,495,380	987,124	191,477	427,497	117,510
Lemon and lime	572,250	218,816	184,814	1,658,420	733,184
Parsley	14,210	5,897	(1)	(1)	(1)
Pineapple	302,500	348,617	19,923	598,629	117,510

TABLE 1.—U.S. AND MEXICAN PRODUCTION AND TRADE DATA (IN METRIC TONS) OF FRUITS AND VEGETABLES—Continued

Commodity	U.S. production	U.S. imports from all countries	U.S. imports from Mexico	Mexican production	Mexican exports
Radish	53,781	15,338	14,654	(1)	(1)
Tomato	10,590,000	804,548	664,362	2,085,831	1,551,685

1 Not available.

Coconut fruit with milk and husk from Mexico. As noted earlier in this document, coconut fruit without husk have been admissible into the United States from Mexico under permit. In this document, we propose to allow coconut fruit with milk and husk from Mexico to be imported into the United States. While the data on coconut production and trade do not differentiate between coconut fruit with or without husk and milk, it is possible that an increase in imports of coconuts into the United States from Mexico would occur, since coconut fruit with milk and husk have previously been inadmissible from Mexico. Because the U.S. production of coconut fruit with milk and husk is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of coconut fruit with milk and husk from Mexico would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers would benefit from the increase in the supply and availability of coconut fruit with milk and husk from Mexico.

Pitaya from Mexico. In the United States, pitaya are a specialty crop produced on a small scale; thus no data on the U.S. production of pitaya are available. Mexican production and trade data are also not available.

Melon and watermelon from Peru. We propose to amend the regulations to allow the entry of commercial shipments of watermelon and several varieties of melon (*Cucumis melo* L. subsp. *melo*) into the United States from Peru. The specific varieties of melons that would be considered for importation include cantaloupe, netted melon (muskmelon, nutmeg melon, and Persian melon), vegetable melon (snake melon and oriental pickling melon), and winter melon (honeydew and casaba melon). The melon and watermelon from Peru would be admissible from the Departments of Lima, Ica, Arequipa, Moquegua, and Tacna, which we propose to recognize as free of the South American cucurbit fly.

From 2001 to 2003, the United States produced an average of almost 3 million metric tons of melon and watermelon and imported an average of 882,350 metric tons. For that same 3-year period, Peru produced an average of 72,337 metric tons of melon and watermelon. For the 2-year period of 2000 and 2001, Peru exported an average of 1,393 metric tons of melon and watermelon. Because the U.S. production of melon and watermelon is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of melon and watermelon from certain areas of Peru would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of melon and watermelon would benefit from the increase in its supply and availability.

Watermelon, squash, cucumber, and oriental melon from the Republic of Korea. We propose to allow watermelon, squash, cucumber, and oriental melon to be imported into the United States from the Republic of Korea (South Korea) under certain conditions. Table 2 shows the average U.S. and South Korean production and trade data available for the 3-year period of 2000, 2001, and 2002, with a 2-year average for 2000 and 2001 for exports from South Korea. Note that data include a broader category than what is actually proposed to be imported; *e.g.*, we propose to import cucumber, but the data are available under the broader category of cucumber and gherkins.

TABLE 2.—PRODUCTION AND TRADE DATA (IN METRIC TONS) FOR U.S. AND SOUTH KOREAN FRUITS AND VEGETABLES

Commodity	U.S. production	U.S. imports from all countries	U.S.imports from South Korea	South Korean production	South Korean exports
Melon and watermelons	2,969,250	882,350	0	324,260	428
Cucumbers and gherkins	1,078,800	15,035	0	451,175	7,030
Pumpkins, squash, and gourds	761,253	223,697	0	240,161	515

Grapes from South Korea. We propose to allow the importation of grapes into the United States from South Korea under certain conditions. From 2001 to 2003, the United States produced an average of almost 6.5 million metric tons of grapes and imported an average of 987,124 metric tons. For that same 3-year period, South Korea produced an average of 461,198 metric tons grapes (approximately 7 percent of the total U.S. production) with an average export of 101 metric tons. Because the U.S. production of grapes is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of grapes from South Korea would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of grapes would benefit from the increase in its supply and availability.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the

consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

APHIS' review and analysis of the potential environmental impacts associated with the proposed importations are documented in detail in an environmental assessment entitled ''Proposed Rule for the 12th Periodic Amendment of the Fruits and Vegetables Regulations'' (September 2003). The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.** The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.*

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–106–1. Please send a copy of your comments to: (1) Docket No. 02–106–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. We also propose to recognize areas in Peru as free from the South American cucurbit fly.

Allowing these fruits and vegetables to be imported would necessitate the use of certain information collection activities, including the completion of import permits, phytosanitary certificates, and fruit fly monitoring records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.1320 hours per response.

Respondents: U.S. importers of fruits and vegetables; plant health officials of exporting countries.

Estimated annual number of respondents: 141.

Estimated annual number of responses per respondent: 5.5319.

Estimated annual number of responses: 780.

Estimated total annual burden on respondents: 103 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–1 would be amended by adding, in alphabetical order, a new definition for *country of origin* to read as follows:

§ 319.56–1 Definitions.

* * * * *

Country of origin. Country where the plants from which the plant products are derived were grown.

* * * * *

3. Section 319.56–2t would be revised to read as follows:

§ 319.56–2t Administrative instructions: Conditions governing the entry of certain fruits and vegetables.

(a) The following commodities may be imported into all parts of the United States, unless otherwise indicated, from the places specified, in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Argentina	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Basil	*Ocimum* spp	Above ground parts.	
	Currant	*Ribes* spp	Fruit.	
	Endive	*Cichorium endivia*	Leaf and stem.	
	Gooseberry	*Ribes* spp	Fruit.	
	Marjoram	*Origanum* spp	Above ground parts.	
	Oregano	*Origanum* spp	Above ground parts.	
Australia	Currant	*Ribes* spp	Fruit	
	Gooseberry	*Ribes* spp	Fruit.	
Austria	Asparagus, white	*Asparagus officinalis*	Shoot (no green may be visible on the shoot).	
Barbados	Banana	*Musa* spp	Flower.	
Belgium	Leek	*Allium* spp	Whole plant	(b)(5)(i)
	Pepper	*Capsicum* spp	Fruit	
Belize	Banana	*Musa* spp	Flower in bracts with stems.	
	Bay leaf	*Laurus nobilis*	Leaf and stem	
	Mint	*Mentha* spp	Above ground parts.	
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii)
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Sage	*Salivia officinalis*	Leaf and stem.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Bermuda	Avocado	*Persea americana*	Fruit.	
	Carambola	*Averrhoa carambola*	Fruit.	
	Grapefruit	*Citrus paradisi*	Fruit.	
	Guava	*Psidium guajava*	Fruit.	
	Lemon	*Citrus limon*	Fruit.	
	Longan	*Dimocarpus longan*	Fruit.	
	Loquat	*Eriobotrya japonica*	Fruit.	
	Mandarin orange	*Citrus reticulata*	Fruit.	
	Natal plum	*Carissa macrocarpa*	Fruit.	
	Orange, sour	*Citrus aurantium*	Fruit.	
	Orange, sweet	*Citrus sinensis*	Fruit.	
	Papaya	*Carica papaya*	Fruit.	
	Passion fruit	*Passiflora* spp	Fruit.	
	Peach	*Prunus persica*	Fruit.	
	Pineapple guava	*Feijoa* spp	Fruit.	
	Suriname cherry	*Eugenia uniflora*	Fruit.	
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.	
Chile	African horned cucumber	*Cucumis metuliferus*	Fruit	(b)(2)(i)
	Babaco	*Carica* x *heilborni* var. *pentagona*.	Fruit	(b)(1)(i)
	Basil	*Ocimum* spp.	Above ground parts.	
	Lucuma	*Manilkara sapota* (=*Lucuma mammosa*).	Fruit	(b)(1)(i)
	Mountain papaya	*Carica pubescens* (=*C. candamarcensis*).	Fruit	(b)(1)(ii)
	Oregano	*Origanum* spp.	Leaf and stem.	
	Pepper	*Capsicum annuum*	Fruit	(b)(1)(i)
	Sandpear	*Pyrus pyrifolia*	Fruit	(b)(1)(ii)
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
China	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
Colombia	Rhubarb	*Rheum rhabarbarum*	Stalk.	
	Snow pea	*Pisum sativum* subsp. *sativum*	Flat, immature pod.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Cook Islands	Banana	*Musa* spp	Green fruit	(b)(4)(i)
	Cucumber	*Cucumis sativus*	Fruit.	
	Drumstick	*Moringa pterygosperma*	Leaf.	
	Ginger	*Zingiber officinale*	Root	(b)(2)(ii)
	Indian mulberry	*Morinda citrifolia*	Leaf.	
	Lemongrass	*Cymbopogon* spp	Leaf.	
	Tossa jute	*Corchorus olitorius*	Leaf.	
Costa Rica	Basil	*Ocimum* spp	Whole plant.	
	Chinese kale	*Brassica alboglabra*	Leaf and stem.	
	Chinese turnip	*Raphanus sativus*	Root.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Jicama	*Pachyrhizus tuberosus* or *P. erosus*.	Root.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
Dominican Republic	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Durian	*Durio zibethinus*	Fruit.	
Ecuador	Banana	*Musa* spp	Flower.	
	Basil	*Ocimum* spp	Above ground parts.	
	Chervil	*Anthriscus* spp	Leaf and stem.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Radicchio	*Cichorium* spp	Above ground parts.	
El Salvador	Basil	*Ocimum* spp	Above ground parts..	
	Cilantro	*Coriandrum sativum*	Above ground parts..	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit	(b)(3)
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i)
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*.	Flower and leaf	(b)(2)(i)
	Loroco	*Fernaldia* spp	Flower, leaf, and stem.	
	Oregano or sweet marjoram	*Origanum* spp	Leaf and stem	(b)(2)(i)
	Parsley	*Petroselinum crispum*	Leaf and stem	(b)(2)(i)
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i)
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
France	Tomato	*Lycopersicon esculentum*	Fruit	(b)(4)(ii)
Great Britain	Basil	*Ocimum* spp	Leaf and stem.	
Grenada	Abiu	*Pouteria caimito*	Fruit	(b)(3)
	Atemoya	*Annona squamosa* x *A. cherimola*.	Fruit.	
	Bilimbi	*Averrhoa bilimbi*	Fruit.	
	Breadnut	*Brosimum alicastrum*	Fruit.	
	Cherimoya	*Annona cherimola*	Fruit	(b)(3)
	Cocoplum	*Chrysobalanus icaco*	Fruit.	
	Cucurbits	Cucurbitaceae	Fruit.	
	Custard apple	*Annona reticulata*	Fruit	(b)(3)
	Durian	*Durio zibethinus*	Fruit.	
	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
	Jambolan	*Syzygium cumini*	Fruit.	
	Jujube	*Ziziphus* spp	Fruit.	
	Langsat	*Lansium domesticum*	Fruit.	
	Litchi	*Litchi chinensis*	Fruit.	
	Malay apple	*Syzygium malaccense*	Fruit.	
	Mammee apple	*Mammea americana*	Fruit.	
	Peach palm	*Bactris gasipaes*	Fruit.	
	Piper	*Piper* spp	Fruit.	
	Pulasan	*Nephelium ramboutan-ake*	Fruit.	
	Rambutan	*Nephelium lappaceum*	Fruit.	
	Rose apple	*Syzygium jambos*	Fruit.	
	Santol	*Sandoricum koetjape*	Fruit.	
	Sapote	*Pouteria sapota*	Fruit.	
	Soursop	*Annona muricata*	Fruit	(b)(3)
	Sugar apple	*Annona squamosa*	Fruit	(b)(3)
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Basil	*Ocimum* spp	Above ground parts.	
	Dill	*Anethum graveonlens*	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i)
	German	*Matricaria chamomile chamomilla* and *Matricaria recutita*.	Flower and leaf	(b)(2)(i)
	Jicama	*Pachyrhizus tuberosus* or *P. erosus*.	Root.	
	Loroco	*Fernaldia* spp	Flower and leaf.	
	Mint	*Mentha* spp	Above ground parts.	
	Oregano	*Origanum* spp.	Leaf and stem.	
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii)
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rhubarb	*Rheum rhabarbarum*	Above ground parts.	
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i)
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
Haiti	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
Honduras	Banana	*Musa* spp	Flower.	
	Basil	*Ocimum basilicum*	Leaf and stem	(b)(2)(i), (b)(5)(iv)
	Chicory	*Cichorium* spp	Leaf and stem.	
	Cilantro	*Coriandrum sativum*	Above ground parts.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*.	Flower and leaf.	(b)(2)(i)
	Loroco	*Fernaldia* spp	Flower and leaf	
	Oregano or sweet marjoram	*Origanum* spp	Leaf and stem	(b)(2)(i)
	Radish	*Raphanus sativus*	Root.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
Indonesia	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp..	Tuber	(b)(2)(iv)
	Onion	*Allium cepa*	Bulb.	
	Shallot	*Allium ascalonicum*	Bulb.	
Israel	Arugula	*Eruca sativa*	Leaf and stem.	
	Chives	*Allium schoenoprasum*	Leaf.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Mint	*Mentha* spp	Above ground parts.	
	Parsley	*Petroselinum crispum*	Above ground parts.	
	Watercress	*Nasturtium officinale*	Leaf and stem.	
Jamaica	Fenugreek	*Tirgonella foenum-graceum*	Leaf, stem, root.	
	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
	Ivy gourd	*Coccinia grandis*	Fruit.	
	Pak choi	*Brassica chinensis*	Leaf and stem.	
	Pointed gourd	*Trichosanthes dioica*	Fruit.	
Japan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Mioga ginger	*Zingiber mioga*	Above ground parts.	
	Mung bean	*Vigna radiata*	Seed sprout.	
	Soybean	*Glycine max*	Seed sprout.	
Liberia	Jute	*Corchorus capsularis*	Leaf.	
	Potato	*Solanum tuberosum*	Leaf.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Mexico	Allium	*Allium* spp	Whole plant.	
	Anise	*Pimpinella anisum*	Leaf and stem.	
	Apple	*Malus domestica*	Fruit.	(b)(1)(iii)
	Apricot	*Prunus armeniaca*	Fruit.	(b)(1)(iii)
	Arugula	*Eruca sativa*	Leaf and stem.	
	Asparagus	*Asparagus officinalis*	Whole plant.	
	Banana	*Musa* spp	Flower and fruit.	
	Bay leaf	*Laurus nobilis*	Leaf and stem.	
	Beet	*Beta vulgaris*	Whole plant.	
	Blueberry	*Vaccinium* spp.	Fruit.	
	Carrot	*Daucus carota*	Whole plant.	
	Coconut	*Cocos nucifera*	Fruit without husk.	
			Fruit with milk and husk.	(b)(5)(v)
	Cucurbits	Cucurbitaceae	Inflorescence, flower, and fruit.	
	Eggplant	*Solanum melongena*	Whole plant.	
	Fig	*Ficus carica*	Fruit	(b)(1)(iii), (b)(2)(i)
	Grape	*Vitis* spp	Fruit, cluster, and leaf	
	Grapefruit	*Citrus paradisi*	Fruit.	(b)(1)(iii)
	Jicama	*Pachyrhizus tuberosus*	Whole plant.	
	Lambsquarters	*Chenopodium* spp	Above ground parts.	
	Lemon	*Citrus limon*	Fruit.	
	Lime, sour	*Citrus aurantiifolia*	Fruit.	
	Mango	*Mangifera indica*	Fruit.	(b)(1)(iii)
	Orange	*Citrus sinensis*	Fruit.	(b)(1)(iii)
	Parsley	*Petroselinum crispum*	Whole plant.	
	Peach	*Prunus persica*	Fruit.	(b)(1)(iii)
	Persimmon	*Diospyros* spp	Fruit.	(b)(1)(iii)
	Pineapple	*Ananas comosus*	Fruit.	
	Pitaya	*Hylocereus* spp	Fruit.	(b)(1)(iv), (b)(2)(i)
	Piper	*Piper* spp	Leaf and stem.	
	Pomegranate	*Punica granatum*	Fruit.	(b)(1)(iii)
	Porophyllum	*Porophyllum* spp	Above ground parts.	
	Prickly-pear pad	*Opuntia* spp	Pad.	
	Radish	*Raphanus sativus*	Whole plant.	
	Rambutan	*Nephelium lappaceum*	Fruit.	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalis*	Above ground parts.	
	Salicornia	*Salicornia* spp	Above ground parts.	
	Tangerine	*Citrus reticulata*	Fruit.	(b)(1)(iii)
	Tepeguaje	*Leucaena* spp.	Fruit.	
	Thyme	*Thymus vulgaris*	Above ground parts.	
	Tomato	*Lycopersicon lycopersicum*	Whole plant.	
	Tuna	*Opuntia* spp	Fruit.	
Morocco	Strawberry	*Fragaria* spp	Fruit.	
Morocco and Western Sahara.	Tomato	*Lycopersicon esculentum*	Fruit.	(b)(4)(ii)
Netherlands	Leek	*Allium* spp	Whole plant.	(b)(5)(i)
	Radish	*Raphanus sativus*	Root.	
New Zealand	Avocado	*Persea americana*	Fruit.	
	Fig	*Ficus carica*	Fruit.	
	Oca	*Oxalis tuberosa*	Tuber.	
Nicaragua	Cilantro	*Coriandrum sativum*	Above ground parts.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties..	*Brassica* spp	Whole plant of edible varieties only.	
	Eggplant	*Solanum melongena*	Fruit.	(b)(3)
	Fennel	*Foeniculum vulgare*	Leaf and stem.	(b)(2)(i)
	German chamomile	*Matricaria recutita* and *M. chamomilla*.	Flower and leaf	(b)(2)(i)
	Loroco	*Fernaldia* spp	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Parsley	*Petoselinum crispum*	Above ground parts.	
	Radicchio	*Cichorium* spp	Above ground parts.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalla*	Above ground parts	
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
Panama	Basil	*Ocimum* spp	Above ground parts.	
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus*.	Seed.	
	Belgian endive	*Cichorium* spp	Above ground parts.	
	Chervil	*Anthriscus cerefolium*	Above ground parts.	
	Chicory	*Cichorium* spp	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit.	
	Endive	*Cichorium* spp	Above ground parts.	
	Fenugreek	*Tirgonella foenum-graceum*	Leaf and stem.	
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Oregano	*Origanum* spp	Above ground parts.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalis*	Above ground parts.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Peru	Argula	*Eruca sativa*	Leaf and stem.	
	Basil	*Ocimum* spp	Leaf and stem.	
	Carrot	*Daucus carota*	Root.	
	Chervil	*Anthriscus* spp	Leaf and stem.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties..	*Brassica* spp	Whole plant of edible varieties only.	
	Cornsalad	*Valerianella* spp	Whole plant.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Lambsquarters	*Chenopodium album*	Above ground parts.	
	Lemongrass	*Cymbopogon* spp	Leaf and stem.	
	Marijoram	*Origanum* spp	Above ground parts.	
	Mustard greens	*Brassica juncea*	Leaf.	
	Oregano	*Origanum* spp	Leaf and stem.	
	Parsley	*Petroselinum crispum*	Leaf and stem.	
	Radicchio	*Cichorium* spp	Leaf.	
	Swiss chard	*Beta vulgaris*	Leaf and stem.	
	Thyme	*Thymus vulgaris*	Above ground parts.	
Philippines	Jicama	*Pachyrhizus tuberosus* or *P. erosus*.	Root.	
Poland	Pepper	*Capsicum* spp	Fruit.	
	Tomato	*Lycopersicon esculentum*	Fruit.	
Republic of Korea	Angelica	*Aralia elata*	Edible shoot.	
	Aster greens	*Aster scaber*	Leaf and stem.	
	Bonnet bellflower	*Codonopsis lanceolata*	Root.	
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.	
	Chinese bellflower	*Platycodon grandiflorum*	Root.	
	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root	(b)(2)(iv)
	Eggplant	*Solanum melongena*	Fruit.	
	Kiwi	*Actinidia deliciosa*	Fruit.	
	Lettuce	*Lactuca sativa*	Leaf.	
	Mugwort	*Artemisia vulgaris*	Leaf and stem.	
	Onion	*Allium cepa*	Bulb	
	Shepherd's pursue	*Capsell bursa*	Leaf and stem.	
	Strawberry	*Fragaria* spp	Leaf and stem.	
	Watercress	*Nasturtium official*	Leaf and stem.	
	Youngia greens	*Youngia sonchifolia*	Leaf, stem, and root.	
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.	
	Jute	*Corchorus capsularis*	Leaf.	
	Potato	*Solanum tuberosum*	Leaf.	
St. Vincent and the Grenadines.	Turmeric	*Curcuma longa*	Rhizome.	
South Africa	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Pineapple	*Ananas* spp	Fruit.	
Spain	Eggplant	*Solanum melongena*	Fruit	(b)(3)
	Tomato	Lycopersicon escyulentum	Fruit	(b)(4)(ii)
	Watermelon	*Citrullus lanatus*	Fruit	(b)(3)

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.	
	Black palm nut	*Astrocaryum* spp	Fruit.	
	Jessamine	*Cestrum latifolium*	Leaf and stem.	
	Malabar spinach	*Bassella alba*	Leaf and stem.	
	Mung bean	*Vigna radiata*	Seed sprout.	
	Pak choi	*Brassica chinensis*	Leaf and stem.	
Sweden	Dill	*Astrocaryum graveolens*	Above ground parts.	
Taiwan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Burdock	*Arctium lappa*	Root.	
	Wasabi (Japanese horseradich)	*Wasabia japonica*	Root and stem.	
Thailand	Dasheen	*Alocasia* spp., *Colocaisa* spp., and *Xanthosoma* spp..	Leaf and stem.	
	Tumeric	*Curcuma domestica*	Leaf and stem.	
Tonga	Burdock	*Arctium lappa*	Root, stem, and leaf.	
	Jicama	*Pachyrhizus tuberosus*	Root.	
	Pumpkin	*Cucurbita maxima*	Fruit.	
Trinidad and Tobago	Lemongrass	*Cymbopogon citratus*	Leaf and stem.	
	Leren	*Calathea allouia*	Tuber.	
	Shield leaf	*Cecropia peltata*	Leaf and stem.	
Zambia	Snow pea	*Pisum sativum* spp. *sativum*	Flat, immature pod.	

(b) Additional restrictions for applicable fruits and vegetables as specified in paragraph (a) of this section.

(1) *Free areas.*

(i) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the country of origin with an additional declaration stating that the commodity originated in a Medfly-free area.

(ii) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area. Fruit from outside Medfly-free areas must be treated in accordance with § 319.56–2x of this subpart.

(iii) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area.

(iv) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating: ''These regulated articles originated in an area free from pests as designated in 7 CFR 319.56–2(h) and, upon inspection, were found free of *Dymicoccus neobrevipes* and *Planococcus minor.*''

(2) *Restricted importation and distribution.*

(i) Prohibited entry into Puerto Rico, Virgin Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within PR, VI, HI, or Guam.''

(ii) Prohibited entry into Puerto Rico, Virgin Islands, and Guam. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within PR, VI, or Guam.''

(iii) Prohibited entry into Hawaii. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within HI.''

(iv) Prohibited entry into Guam. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within Guam.''

(3) Commercial shipments only.

(4) *Stage of fruit.*

(i) The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) Bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or yellow but firm.

(ii) The tomatoes must be green upon arrival in the United States. Pink or red fruit may only be imported in accordance with § 319.56–2dd of this subpart.

(5) *Other conditions.*

(i) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity is apparently free of *Acrolepiopsis assectella.*

(ii) Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*).

(iii) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and all damaged fruit was removed from the shipment prior to export under the supervision of the NPPO.

(iv) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is free from *Planococcus minor.*

(v) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F_1 hybrid, Malayan Dwarf×Panama Tall) (which are resistant to lethal yellowing disease) based on verification of the parent stock. (Approved by the Office of Management and Budget under control number 0579–0049)

4. Sections 319.56–2y and 319.56–2aa would be revised and a new § 319.56–2ll would be added to read as follows:

§ 319.56–2y Conditions governing the entry of melon and watermelon from certain countries in South America.

(a) *Cantaloupe and watermelon from Ecuador.* Cantaloupe (*Cucumis melo*) and watermelon (*fruit*) (*Citrullus lanatus*) may be imported into the United States from Ecuador only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe or watermelon may be imported in commercial shipments only.

(2) The cantaloupe or watermelon must have been grown in an area where trapping for the South American cucurbit fly (*Anastrepha grandis*) has been conducted for at least the previous 12 months by the national plant protection organization (NPPO) of Ecuador, under the direction of APHIS, with no findings of the pest.[7]

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar.

(4) The cantaloupe or watermelon may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe or watermelon is packed must be stamped with the name of the commodity followed by the words ''Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI''.

(b) *Cantaloupe, honeydew melons, and watermelon from Brazil.* Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Brazil only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Brazil considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Brazil is considered free of the South American cucurbit fly: That portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015 from Mossoro to the Ceara State line; and on the west by the Ceara State line to the Atlantic Ocean.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Brazil that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(c) *Cantaloupe, honeydew melons, and watermelon from Venezuela.* Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Venezuela only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Venezuela considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Venezuela is considered free of the South American cucurbit fly: The Paraguana Peninsula, located in the State of Falcon, bounded on the north and east by the Caribbean Ocean, on the south by the Gulf of Coro and an imaginary line dividing the autonomous districts of Falcon and Miranda, and on the west by the Gulf of Venezuela.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Venezuela that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(d) *Cantaloupe, netted melon, vegetable melon, winter melon, and watermelon from Peru.* Cantaloupe, netted melon, vegetable melon, and winter melon (*Cucumis melo* L. subsp. *melo*); and watermelon may be imported into the United States from Peru only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The fruit may be imported in commercial shipments only.

(2) The fruit must have been grown in the area of Peru considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The Departments of Lima, Ica, Arequipa, Moquegua, and Tacna in Peru are considered free of the South American cucurbit fly.

(ii) All shipments must be accompanied by a phytosanitary certificate issued by the NPPO of Peru that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly, and upon inspection, were found free of the gray pineapple mealybug (*Dymicoccus neobrevipes*).

(3) The fruit must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(4) All shipments of fruit must be labeled in accordance with § 319.56–2(g) of this subpart, and the boxes in which the fruit is packed must be labeled ''Not for distribution in HI, PR, VI, or Guam.''

* * * * *

§ 319.56–2aa Conditions governing the entry of watermelon, squash, cucumber, and oriental melon from the Republic of Korea.

Watermelon (*Citrullus lanatus*), squash (*Curcurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*Cucumis melo*) may be imported into the United States from the Republic of Korea only in accordance with this paragraph and all other applicable requirements of this subpart:

(a) The fruit must be grown in pest-proof greenhouses registered with the

[7] Information on the trapping program may be obtained by writing to the Animal and Plant Health Inspection Service, International Services, Stop 3432, 1400 Independence Avenue SW., Washington, DC 20250–3432.

Republic of Korea's national plant protection organization (NPPO).

(b) The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.

(c) The NPPO must set and maintain fruit fly traps in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.

(d) The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.

(e) The fruit may be shipped only from December 1 through April 30.

(f) Each shipment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: ''The regulated articles in this shipment were grown in registered greenhouses as specified by 7 CFR 319.56–2aa.''

(g) Each shipment must be protected from pest infestation from harvest until export. Newly harvested fruit must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting, in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the shipment arrives at the port in the United States.

* * * * *

§ 319.56–2ll Conditions governing the entry of grapes from the Republic of Korea.

Grapes (*Vitis* spp.) may be imported into the United States from the Republic of Korea under the following conditions:

(a) The fields where the grapes are grown must be inspected during the growing season by the Republic of Korea's national plant protection organization (NPPO). The NPPO will inspect 250 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(b) If evidence of *Conogethes punctiferalis, Eupoecilia ambiguella, Sparganothis pilleriana, Stathmopoda auriferella,* or *Monilinia fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(c) Fruit must be bagged from the time the fruit sets until harvest.

(d) Each shipment must be inspected by the NPPO before export. For each shipment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella,* or *M. fructigena,* and *Nippoptilia vitis.*

Done in Washington, DC, this 11th day of December, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31202 Filed 12–17–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AH28

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 7 in Certificate of Compliance Number 1004. Amendment No. 7 would incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment would add damaged Boiling Water Reactor spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, the amendment would include three minor changes to the Technical Specifications to correct inconsistencies and remove irrelevant references.

DATES: Comments on the proposed rule must be received on or before January 20, 2004.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH28) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC), Technical Specifications (TS),

and preliminary safety evaluation report can be found under ADAMS Accession Nos. ML032100773, ML032100775, and ML032100776, respectively.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 7 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on March 2, 2004. However, if the NRC receives significant adverse comments by January 20, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 20th day of November, 2003.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 03–31208 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 Series Airplanes; A300 B4 Series Airplanes; A300 B4–600, B4–600R, F4–600R, and C4–605R Variant F (Collectively Called A300–600) Series Airplanes; and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires either a one-time

ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. This action would require repetitive ultrasonic inspections to detect cracking of certain skin lap joints in additional areas of the fuselage and repair if necessary. This action also would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to detect and correct cracking of certain skin lap joints, which could result in reduced structural integrity and decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–111–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Anthony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056: telephone (425) 227–2190: fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of comments received.

Submit comments using the following format:

- Organize comments issue-by issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–111–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docked No. 2001–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 31, 2000, the FAA issued AD 2000–02–39, amendment 39–11557 (65 FR 5756, February 7, 2000), applicable to certain Airbus Model A300 series airplanes, to require either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. That action was prompted by notification from the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, that during a routine maintenance check on an Airbus Model A300 series airplane, a horizontal crack of 35.6 inches was detected in the surrounding panel above the right mid-passenger door. The requirements of that AD are intended to detect and correct cracking of the longitudinal skin splice (skin lap joint) above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, further analysis by the manufacturer revealed that additional areas with similar stress loading and design may also be affected by cracking. Because of the similar stress loading and design, cracking of certain skin lap joints may exist on all Airbus Model A300 B4–600, B4–600R, F4–600R, C4–605R Variant F (collectively called A300–600), and A310 series airplanes; therefore, those airplanes may also be subject to the same unsafe condition described above. The DGAC issued French airworthiness directive 2002–639(B), dated December 24, 2002, to ensure the continued airworthiness of these airplanes in France. That French airworthiness directive supersedes French airworthiness directives 2000–001–300(B)R1 and 2001–071(B).

Explanation of Relevant Service Information

For Model A300 B2 and A300 B4 series airplanes, Airbus has issued Service Bulletins A300–53–0354, Revision 02, dated December 13, 2001; A300–53–0356, dated December 26, 2000; and A300–53–0357, dated December 26, 2000. These service bulletins describe procedures for repetitive ultrasonic inspections to detect cracking in certain skin lap joints, and repair if necessary.

- Service Bulletin A300–53–0354 describes procedures for repetitive inspections of skin lap joints located above the mid-passenger doors. If repair is necessary, operators are instructed to do temporary or final repair, as applicable, per the applicable repair drawing.
- Service Bulletin A300–53–0356 describes procedures for repetitive inspections of skin lap joints located below the mid-passenger doors and in the lower fuselage aft of the wing. If repairs is necessary, operators are instructed to do a final repair per the applicable Airbus structural repair manual. The effectivity of this specific service bulletin excludes those airplanes modified by Airbus Modification 2611 in production.
- Service Bulletin A300–53–0357 describes procedures for repetitive inspections on skin lap joints located above the aft-passenger doors. If repair

is necessary, operators are instructed to contact Airbus for repair instructions.

For Model A300–600 series airplanes, Airbus has issued Service Bulletin A310–53–6129, Revision 02, dated December 13, 2001, which describes procedures for repetitive ultrasonic inspections to detect cracking in skin lap joints located above the mid-passenger doors, and repair if necessary.

For Model A310 series airplanes, Airbus has issued Service Bulletin A310–53–2112, dated December 26, 2000, which describes procedures for repetitive ultrasonic inspections to detect cracking in skin lap joints located below the aft passenger door, and repair if necessary.

Accomplishment of the actions specified in the service bulletins are intended to adequately address the identified unsafe condition.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD actions is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–02–39 to continue to require either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. The proposed AD would also require repetitive ultrasonic inspections to detect cracking of certain skin lap joints in additional areas of the fuselage, and repair if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Explanation of Change Made to Existing Requirements

The FAA has changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this action.

Explanation of Change to Applicability

In this proposed AD the FAA has revised the applicability of affected Airbus Model A300 series airplanes to ''Airbus Model A300 B2 Series Airplanes'' and ''Airbus Model A300 B4 Series Airplanes'' to match the most recent type certificate data sheet for the affected models.

Also, for Model A300 series airplanes, the applicability of the existing AD includes serial numbers ''1 through 156 inclusive.'' In this action the applicability for Airbus Model A300 B2 and B4 series airplanes has been changed to include serial numbers ''0003 through 0156 inclusive.'' The airplanes with serial numbers 1 and 2 were destroyed by the manufacturer.

No Flight With Cracks

Airbus Service Bulletins A300–53–0354, Revision 02; A300–53–0356; and A300–53–6129, Revision 02; allow flight with cracking of certain lengths, as specified in the applicable service bulletin. This proposed AD would not allow flight with any cracking, regardless of crack length. We have determined that because of the safety implications and consequences associated with such cracking, any cracking must be repaired before further flight.

Difference Between the Proposed AD and the Service Information

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions and repetitive inspections after a final repair, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impacts

There are approximately 128 airplanes of U.S. registry that would be affected by this proposed AD.

The ultrasonic inspection that is currently required by AD 200–02–39 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $260 per airplane.

The detailed inspection that is currently required by AD 2000–01–39 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $130 per airplane.

The ultrasonic inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $8,320, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11557 (65 FR 5756, February 7, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2001–NM–111–AD. Supersedes AD 2000–02–39, Amendment 39–11557.

Applicability: Model A300 B2 series airplanes; A300 B4 series airplanes; A300 B4–600, B4–600R, and C4–605R Variant F (Collectively Called A300–600) series airplanes; and A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of certain skin lap joints, which could result in reduced structural integrity and decompression of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2000–02–39

Ultrasonic or Detailed Visual Inspection

(a) For Model A300 series airplanes having serial number (S/N) 0003 through 0156 inclusive: Within 14 days after January 31, 2000 (the effective date of AD 2000–02–39, amendment 39–11557), accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Airbus All Operators Telex (AOT) A300–53A0352, dated January 4, 2000.

(1) Perform a one-time ultrasonic inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

(i) If no cracking is detected: No further action is required by this paragraph.

(ii) If any cracking is detected: Before further flight, accomplish the requirements of paragraph (b) of this AD.

(2) Perform a detailed inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(i) If no cracking is detected: Accomplish the requirements of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Repeat the detailed inspection thereafter at intervals not to exceed 80 flight cycles; and

(B) Within 90 days after January 31, 2000: Accomplish the requirements of paragraph (a)(1) of this AD.

(ii) If any cracking is detected: Before further flight, accomplish the requirements of paragraph (b) of this AD.

Corrective Actions

(b) For airplanes on which any cracking is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD: Before further flight, install either a temporary or final repair, in accordance with Airbus AOT A300–53A0532, dated January 4, 2000.

(1) If a temporary repair is installed: Prior to the accumulation of 2,000 flight cycles after the installation of the repair, install the final repair.

(2) If a final repair is installed: No further action is required by paragraphs (a) and (b) of this AD.

New Requirements of This AD

Inspections and Corrective Actions: Model A300 B2 and B4 Series Airplanes

(c) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0305 inclusive: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located above the mid-passenger door panel below stringer 11, between frames 28A and 31, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001 Do the inspection at the times specified in paragraphs (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (a)(2)(i)(A) of this AD.

(1) For airplanes with S/Ns 0003 through 0156 inclusive, except those airplanes on which the final repair in AOT A300–53A0352, Dated January 4, 2000; or Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001, has been accomplished: Do the inspection within 2,500 flight cycles after the inspection per paragraph (a) of this AD, or within 14 days after the effective date of this AD, whichever occurs later. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles.

(2) For airplanes with S/Ns 0157 through 0305 inclusive, except those airplanes on which the final repair in Airbus Sevice Bulletin A300–53–0354, Revision 02, dated December 13, 2001, has been accomplished: Do the initial inspection at the applicable time specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 6,500 flight cycles.

(i) For airplanes with less than 20,500 flight cycles as of the effective date of this AD: Inspect before the accumulation of 20,500 total flight cycles or within 19 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes with 20,500 total flight cycles or more, but less than 26,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(d) Accomplishment of the actions specified in Airbus Service Bulletin A300–53–0354, Revision 01, dated December 26, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(e) If any cracking is detected during any inspection per paragraph (c) of this AD: Do paragraphs (e)(1) and (e)(2) of this AD, as applicable.

(1) If any crack is detected in Area A as defined in Figure 1 of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(2) If any crack is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001: Before further flight, do a temporary repair or final repair, as applicable, per the Accomplishment Instructions of the service bulletin.

(f) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0305 inclusive which have been repaired per paragraph (d)(2) of this AD: Do paragraph (f)(1) of (f)(2) of this AD, as applicable.

(1) If a temporary repair has been accomplished: Within 2,000 flight cycles after doing the temporary repair, do the final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001.

(2) If a final repair has been accomplished: Perform repetitive inspections per a method and at intervals approved by either the Manager, International Branch, ANM–116, Transport Directorate, FAA, or the DGAC (or its delegated agent).

(g) For Model A300 B2 and A300 B4 series airplanes, except those airplanes with Airbus Modification 2611 accomplished in production: Prior to the accumulation of 30,300 total flight cycles, or within 19 months after the effective date of this AD, whichever occurs later, do the inspections in paragraphs (g)(1) and (g)(2) of this AD.

(1) From the airplane interior: Do an ultrasonic inspection to detect cracking of the skin lap joint located below the mid-passenger door panel, below stringer 27, between frames 28A and 30A, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356, dated December 26, 2000.

(i) If no cracking is detected: Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed 4,100 flight cycles.

(ii) If any cracking is detected in area A as defined in Figure 1 of Airbus Service Bulletin A300–53–0356: Before further flight, repair the affected area per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). Upon completion of the repair, do repetitive inspections of the affected area per a method and at intervals approved by one of the airworthiness authorities listed above.

(2) Do an external ultrasonic inspection to detect cracking of the skin lap joint located in the lower fuselage, aft of the wing, below the mid-passenger door panel, below stringer 52, between frames 56 and 58, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356, dated December 26, 2000. If an internal or external repair doubler approved by the FAA or the DGAC (or its delegated agent), of Airbus design origin, has been installed in this area, the doubler does not need to be removed for inspection of this area.

(i) If no cracking is detected: Repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 4,100 flight cycles.

(ii) If any cracking is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–0356: Before further flight, do a final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356.

(h) For Model A300 B2 and A300 B4 series airplanes, except those on which Airbus Service Bulletin A300–53–0209 has been accomplished: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located below the aft-passenger door panel, below stringer 28, between frames 72 and 76 on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0357, dated December 26, 2000. If an internal or external repair doubler is installed in this area, inspection of this area is not required. Perform the inspection at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Prior to the accumulation of 24,100 total flight cycles for S/Ns 0003 through 0156 inclusive, or 29,500 total flight cycles for S/Ns 0157 through 0305 inclusive.

(2) Within 2,000 flight cycles or 19 months after the effective date of this AD, whichever occurs first.

(i) If no cracking is detected during the inspection required by paragraph (h) of this AD: Repeat the inspection required by paragraph (h) of this AD at the intervals specified in paragraph (i)(1) and (i)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes with S/Ns 003 through 0156 inclusive: Repeat the inspection thereafter at intervals not to exceed 3,400 flight cycles.

(2) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0157 through 0305 inclusive: Repeat the inspection thereafter not to exceed 5,400 flight cycles.

(j) For all Model A300 B2 and A300 B4 series airplanes; if any cracking is detected during the inspection required by paragraph (h) of this AD; Before further flight, repair the affected area, per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspections and Corrective Actions: Model A310 Series Airplanes

(k) For Model A310 series airplanes; prior to the accumulation of 29,500 total flight cycles, or within 19 months after the effective date of this AD, whichever occurs later: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located below the aft-passenger door panel, below stringer 28, between frame 72 and frame 76, on the right and left sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A310–53–2112, dated December 26, 2000. If an internal or external repair doubler is installed in any inspection area, inspection of that specific area is not required.

(1) If no cracking is detected: Repeat the inspection thereafter at intervals not to exceed 5,400 flight cycles.

(2) If any cracking is detected: Before further flight, repair the affected area, per a method and at repetitive intervals approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspections and Corrections Actions: Model A300–600 Series Airplanes

(l) For Model A300–600 series airplanes: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located above the mid-passenger door panel, below stringer 11, between frames 28A and 31, on the right and left sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001. Do the inspection at the applicable time specified in paragraph (l)(1), (l)(2), or (l)(3) of this AD. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 6,500 flight cycles.

(1) For airplanes with less than 20,500 flight cycles as of the effective date of this AD: Inspect before the accumulation of 20,500 total flight cycles or within 19 months after the effective date of this AD, whichever occurs later.

(2) For airplanes with 20,500 total flight cycles or more, but less than 26,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(3) For airplanes with 26,500 total flight cycles or more as of the effective date of this AD: Inspect within 200 flight cycles or 30 days after the effective date of this AD, whichever occurs later.

(m) If any cracking is detected during any inspection per paragraph (l) of this AD: Do paragraphs (m)(1) and (m)(2) of this AD, as applicable.

(1) If any crack is detected in Area A as defined in Figure 1 of Airbus Service Bulletin A300–53–619, Revision 02, dated December 13, 2001: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(2) If any crack is detected in Area B as defined in figure 1 of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001: Before further fight, do a temporary repair or final repair, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001.

(n) For airplanes which have been repaired per paragraph (m)(2) of this AD: Do paragraph (n)(1) or (n)(2) of this AD, as applicable.

(1) If a temporary repair has been accomplished: Within 2,000 flight cycles after doing the temporary repair, do the final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001.

(2) If a final repair has been accomplished: Perform repetitive inspections per a method and at intervals approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Credit for Previous Service Bulletin Revision

(o) Accomplishment of the actions in Airbus Service Bulletin A300–53–6129, Revision 01, dated December 26, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (1) of this AD.

Submission of Inspection Results to Manufacture Not Required

(p) Although the service bulletins referenced in this AD specify to submit information to the manufacture, this AD does not include such a requirement.

Alternative Methods of Compliance

(q)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–02–39, amendment 39–11557, are approved as alternative methods of compliance with the applicable actions in this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–639(B), dated December 24, 2002.

Dated: Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31194 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require a detailed inspection of the wing leading edge de-icer boots to determine if they comply with the patch size and/or patch number limits in the critical zone as defined in the Aircraft Maintenance Manual; and corrective action, if necessary. This action is necessary to prevent reduced aerodynamic smoothness of the wing leading edge de-icer boots and possible reduced stall margin, which could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–126–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–126–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The manufacturer has revised the Aircraft Maintenance Manual (AMM) to tighten the limit on the size and number of repair patches on the de-icer boots in the wing critical zone to avoid any adverse effect to the aerodynamic stall margins. The new limits are based on the airplane aerodynamic characteristics and the smoothness of the boots. Reduced aerodynamic smoothness of the wing leading edge de-icer boots, and possible reduced stall margin, if not corrected, could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning.

Explanation of Relevant Service Information

Bombardier has issued revisions to the AMM, listed in the following table, which describe procedures for a detailed inspection of the wing leading edge de-icer boots for damage and to determine if they comply with the patch size and/or patch number limits in the critical zone as defined in the AMM. The AMM revisions also describe procedures for replacement of non-compliant de-icer boots with new de-icer boots, if necessary.

TABLE—AMM REVISIONS

Model—	AMM—	Program support manual (PSM)—	Chapter—	Revision—	Dated—
DHC–8–101, –102, –103, and –106	Series 100	1–8–2	30–10–48	49	October 3, 2001.
DHC–8–201, and –202	Series 200	1–82–2	30–12–00	11	October 19, 2001.
DHC–8–301, –311, and –315	Series 300	1–83–2	30–10–48	.....	October 30, 2001.

[1] Temporary Revision (TR) 30–21.

Accomplishment of the actions specified in the applicable AMM revision is intended to adequately address the identified unsafe condition.

TCCA classified these actions as mandatory and issued Canadian airworthiness directive CF–2001–43, dated November 23, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept us informed of the situation described above. We have examined the findings of the TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Canadian airworthiness directive described previously, and corrective actions, if necessary. The corrective actions involve the temporary revision of the Aircraft Flight Manual (AFM) to specify operating limitations, and eventual replacement of the de-icer boots with new boots.

Cost Impact

We estimate that 200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $26,000, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–126–AD.

Applicability: All Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced aerodynamic smoothness of the wing leading edge de-icer boots and possible reduced stall margin, which could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning; accomplish the following:

Maintenance Manual Reference

(a) The term ''Aircraft Maintenance Manual,'' or the acronym ''AMM,'' as used in this AD, means the chapter of the Bombardier Aircraft Maintenance Manuals listed in Table 1 of this AD, as applicable:

TABLE 1.—AMM REFERENCE

Model—	AMM—	Program support manual (PSM)—	Chapter—	Revision—	Dated—
DHC–8–101, –102, –103, and –106	Series 100	1–8–2	30–10–48	49	October 3, 2001.
DHC–8–201, and –202	Series 200	1–82–2	30–12–00	11	October 19, 2001.
DHC–8–301, –311, and –315	Series 300	1–83–2	30–10–48	(1)	October 30, 2001.

[1] Temporary Revision (TR) 30–12.

Detailed Inspection

(b) Within 60 days after the effective date of this AD: Perform a detailed inspection of the wing leading edge de-icer boots to determine if the de-icer boots comply with the patch size and/or patch number limits in the critical zone as defined in the AMM.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If all de-icer boots are within the patch size and/or patch number limits in the critical zone as defined in the AMM, no further action is required by this paragraph.

(2) If any de-icer boot exceeds the patch size and/or patch number limits in the critical zone as defined in the AMM, accomplish the corrective actions required by paragraph (c) of this AD.

Corrective Actions

(c) For de-icer boots that require the corrective actions described in paragraph (b)(2) of this AD, accomplish the following corrective actions:

(1) Before further flight, insert the contents of Table 2 of this AD in the Limitations Section of the Aircraft Flight Manual (AFM) and advise flight crews to comply with the performance penalties detailed in Table 2 of this AD.

(2) Within 24 months after the effective date of this AD, replace all wing de-icer boots that exceed the patch size and/or patch number limits in the critical zone as defined in the AMM, with new de-icer boots, in accordance with the applicable AMM referenced in Table 1 of this AD. Remove the contents of Table 2 of this AD from the AFM, and terminate the requirements to comply with the performance penalties after all replacements are accomplished.

TABLE 2.—PERFORMANCE PENALTIES

AFM sections	AFM limits with de-ice boot patch limits exceeded **Note:** Flap settings as applicable to aircraft model
T/O Speed: Sub-Section 5–2	
V_1, V_r & V_2	*Add:* 5 kt (flap 0°) 5 kt (flap 5°) 5 kt (flap 10°) 5 kt (flap 15°)
Final T/O Climb Speed	*Add:* 5 kt (flap 0°)
T/O WAT Limit: Sub-Section 5–3 **Note:** Weight reduction not required when limited by maximum structural weight.	*Subtract:* 18 kg, 400 lb. (flap 0°) 90 kg, 200 lb. (flap 5°) No change (flap 10°) No change (flap 15°)
T/O Climb: Sub-Section 5–4	
1st Seg. Gradient	*Subtract:* 0.008 (flap 0°) 0.004 (flap 5°) 0.004 (flap 10°) 0.004 (flap 15°)
2nd Seg. Gradient	*Subtract:* 0.005 (flap 0°) 0.002 (flap 5°) 0.002 (flap 10°) 0.002 (flap 15°)
Final Seg. Gradient	*Subtract:* 0.009 (flap 0°)
T/O Field Length: Sub-Section 5–5	

TABLE 2.—PERFORMANCE PENALTIES—Continued

AFM sections	AFM limits with de-ice boot patch limits exceeded **Note:** Flap settings as applicable to aircraft model
TOR, TOD & ASD	*Add:* 16% (flap 0°) 16% (flap 5°) 16% (flap 10°) 16% (flap 15°)
Net T/O Flight Path: Sub-Section 5–6	
Ref Gradient	*Subtract* 0.005 (flap 0°) 0.002 (flap 5°) 0.002 (flap 10°) 0.002 (flap 15°)
4th Seg. Net Gradient	*Subtract:* 0.012 (flap 0°)
Flap Retraction Initiation Speed	*Add:* 5 kt (flap 5°) 5 kt (flap 10°) 5 kt (flap 15°)
Enroute Climb Data: Sub-Section 5–7	
Enroute Climb Speed	Add: 5 kt
Net Climb Gradient	*Subtract:* 0.004
OEI-Climb Ceiling	*Subtract:* 1,200 ft
Landing Speed: Sub-Section 5–8	
Approach, Go-around & Vref	*Add:* 5 kt (flap 5°) 5 kt (flap 10°) 5 kt (flap 15°) 5 kt (flap 35°)
Landing WAT Limit: Sub-Section 5–9 **Note:** Weight reduction not required when limited by maximum structural weight.	*Subtract:* 860 kg, 1900 lb.(flap 10°) 225 kg, 500 lb. (flap 15°) 180 kg, 400 lb. (flap 35°)
Landing Climb Data: Sub-Section 5–10	
Approach Gross Climb Gradient	*Subtract:* 0.010 (flap 5°) 0.003 (flap 10°) 0.002 (flap 15°)
Balked Landing Gross Climb Gradient	*Subtract:* 0.035 (flap 10°) 0.017 (flap 15°) 0.016 (flap 35°)
Landing Field Length: Sub-Section 5–11	*Add:* 23% (flap 10°) 16% (flap 15°) 10% (flap 35°)
Brake Energy: Sub-Section 5–12	
Accel/Stop B.E.	*Add* 7% (flap 0°) 7% (flap 5°) 7% (flap 10°) 7% (flap 15°)
Landing B.E.	*Add:* 30% (flap 10°) 20% (flap 15°) 8% (flap 35°)

Parts Installation

(d) As of the effective date of this AD, no person may install—on any airplane—a de-icer boot patch in the critical zone of the wing de-icer boots that exceeds the AMM limits referenced in paragraph (b) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–43, dated November 23, 2001.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31183 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–80–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 C4–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes. This proposal would require a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary. This action is necessary to detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–80–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–80–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes. The DGAC previously advised the FAA that damaged center tank fuel pumps and pump canisters had been found on Airbus Model A300 B4–600R and A300 F4–600R series airplanes. Investigation revealed that the pump canister legs had cracked due to fatigue. In one instance, this led to the separation of the upper part of the pump canister from its lower part attached at the center tank bottom wall. Fatigue cracking was also found at the base of the fuel pump diffuser housing. The DGAC has since advised the FAA that fuel tank pump canisters have also been found broken on Model A300 B4–600 and A300 C4–600 series airplanes, which are consequently subject to the unsafe condition identified in this proposed AD: separation of a fuel pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank.

Related Rulemaking

On December 23, 1999, the FAA issued AD 99–27–07, amendment 39–11488 (65 FR 213, January 4, 2000), for all Model A300 B4–600R and A300 F4–600R series airplanes. That AD requires a one-time inspection for damage of the center tank fuel pumps and fuel pump canisters, repetitive inspections of the fuel pumps and fuel pump canisters, and replacement of damaged parts with

new or serviceable parts. The actions specified by that AD are intended to detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–600–28A6075, dated February 20, 2003, which describes procedures for the following:

- A one-time detailed inspection to detect cracks, fretting, and other damage of the lower part of the pump diffuser guide slots (bayonet) of the center tank fuel pumps and the bottom of the pump diffuser housings; and replacement of any damaged pump and its corresponding fuel pump canister with new parts.
- A one-time detailed inspection to detect cracks of the center tank fuel pump canisters, and replacement of any cracked fuel pump canister and its corresponding fuel pump with new parts.
- Repetitive detailed inspections to detect damage of the fuel pumps, and replacement of any damaged pump with a new part.
- Repetitive nondestructive test (NDT) inspections to detect damage of the fuel pump canisters, and replacement of any damaged canister with a new part. Replacement of a canister would reset the inspection schedule for the next inspection to 7,000 flight cycles, to be repeated within 1,500-flight-cycle intervals. Replacement of a canister eliminates the need to reinspect the fuel pumps.
- A report of the findings for each inspection.

The DGAC classified this AOT as mandatory and issued French telegraphic airworthiness directive 2003–085 (B), dated February 21, 2003, to ensure the continued airworthiness of these airplanes in France.

Airbus AOT A300–600–28A6075 refers to Airbus Alert Service Bulletin A300–28A6061, Revision 04, dated August 1, 2002, as an additional source of service information for accomplishment of the NDT inspections.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in and in accordance with the AOT described previously, except as discussed under ''Differences Between Proposed AD and AOT/French Airworthiness Directive.'' This proposed AD would also require that operators report their findings to the manufacturer.

Differences Between Proposed AD and AOT/French Airworthiness Directive

The DGAC issued French airworthiness directive 2003–085 (B) as ''telegraphic.'' The FAA agrees that the unsafe condition could warrant immediate attention but finds it unnecessary to immediately adopt this rule. At the time of issuance, this proposed AD would affect only two airplanes. The FAA has been advised that the one-time detailed inspections specified in paragraph (a) of this proposed AD (with a proposed compliance time of 15 days) have been accomplished for both affected airplanes. Furthermore, the proposed compliance time for the repetitive inspections is long enough to provide notice and the opportunity for public comment on the proposed rule.

The applicability/effectivity for the French airworthiness directive/AOT includes A300 B4–600 and A300 C4–600 series airplanes, which are identified as ''A300–600 aircraft without a fuel trim tank system (pre-production Mod 4801).'' The only Model A300 C4–600 airplane listed on the type certificate data sheet is the A300 C4–605 Variant F. Therefore, the applicability of this proposed AD is Model A300 B4–601, A300 B4–603, A300 B4–620, and A300 C4–605 Variant F series airplanes; except those equipped with a fuel trim tank system.

The French airworthiness directive excludes certain airplanes (serial numbers 546, 553, 618, and 623) that ''have already been inspected per Airbus Alert Service Bulletin A300–28A6061.'' However, that inspection must be repeated at regular intervals. The FAA finds that those airplanes are still subject to the identified unsafe condition and should be included in the applicability of this proposed AD.

Interim Action

This is considered to be interim action. The inspection reports that would be required by this proposed AD would enable the manufacturer to obtain better insight into the nature, cause, and extent of the fuel pump damage, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA published a new version of 14 CFR 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). This proposed AD does not include this material; however, the office authorized to approve AMOCs is identified in paragraph (d).

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD. The detailed inspections would take about 2 work hours per airplane, and the NDT inspection would take about 5 work hours per airplane, per inspection cycle. The average labor rate is $65 per work hour. Based on these figures, the cost per airplane is estimated to be $130 for the detailed inspections and $325 per NDT inspection.

The FAA has been advised that the proposed one-time detailed inspections have already been accomplished for both of the U.S.-registered airplanes. Therefore, the future economic cost impact of this proposed AD on U.S. operators would be only $325 per airplane, per each of the repetitive NDT inspections.

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, plan, or perform other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2003–NM–80–AD.

Applicability: Model A300 B4–601, A300 B4–603, A300 B4–620, and A300 C4–605 Variant F series airplanes; certificated in any category; except those airplanes equipped with a fuel trim tank system (Airbus Modification 4801).

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank, accomplish the following:

Detailed Inspections

(a) Within 15 days after the effective date of this AD (unless accomplished previously), perform detailed inspections as specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with paragraph 4.2 of Airbus All Operators Telex (AOT) A300–600–28A6075, dated February 20, 2003.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Inspect the lower part of the pump diffuser guide slots (bayonet) of the center tank fuel pumps and the bottom of the pump diffuser housings to detect cracks, fretting, and other damage. Replace any damaged pump and the corresponding fuel pump canister with new parts before further flight in accordance with the AOT.

(2) Inspect the center tank fuel pump canisters to detect cracks. Replace any cracked fuel pump canister and the corresponding fuel pump with new parts before further flight in accordance with the AOT.

Repetitive Inspections

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed inspection of the fuel pumps, and an eddy current inspection of the fuel pump canisters, to detect damage. Do the inspections in accordance with paragraph 4.3 of Airbus AOT A300–600–28A6075, dated February 20, 2003. Replace any damaged part with a new part before further flight in accordance with the AOT. Repeat the inspections at intervals not to exceed 1,500 flight cycles.

(c) Within 7,000 flight cycles after canister replacement as specified in paragraph (b) of this AD: Perform an eddy current inspection of the fuel pump canisters to detect damage in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Replace any damaged part with a new part before further flight in accordance with the AOT. Thereafter repeat the inspection at intervals not to exceed 1,500 flight cycles.

Note 2: Airbus AOT A300–600–28A6075 refers to Airbus Alert Service Bulletin A300–28A6061, Revision 04, dated August 1, 2002, as an additional source of service information for accomplishment of the eddy current inspection required by paragraph (b)(2) of this AD.

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Submit a report of findings (both positive and negative) of each inspection required by this AD, in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For any inspection accomplished after the effective date of this AD: Submit the report within 10 days after performing that inspection.

(2) For any inspection accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in French telegraphic airworthiness directive 2003–085 (B), dated February 21, 2003.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31182 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–352–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 series airplanes. This proposal would require replacement of the air turbine starters (ATS) with modified ATSs. This action is necessary to prevent sheared ATS output shafts, which could result in oil flowing down the engine accessory gear box shafts and dripping into the engine

compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–352–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–352–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–352–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–352–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that it has received reports of interference problems between the engine air turbine starter (ATS) output shafts and the engine accessory gear box (AGB) shafts, which resulted in sheared ATS output shafts. Sheared ATS output shafts could result in oil flowing down the engine AGB shafts and dripping into the engine compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–80–0004, Change 01, dated October 22, 2001, which describes procedures for replacing the existing ATS with a modified ATS. That service bulletin references Honeywell Service Bulletin 3505910–80–1710, Revision 1, dated August 7, 2001, as an additional source of service information for accomplishment of the modification. The Honeywell service bulletin is included within the EMBRAER service bulletin. The procedures in the Honeywell service bulletin include inspecting the magnetic drain plug for metal contamination, inspecting the ATS output shafts for interference marks, modifying the ATS output shafts by machining/drilling holes and installing a restrictor, and installing modified ATSs on the airplane. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–09–04, dated October 10, 2001, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Difference Between the Brazilian AD and the Proposed AD

The effectivity listed in the original issue of EMBRAER Service Bulletin 145–80–0004, dated May 23, 2001, was the same as the applicability listed in Brazilian airworthiness directive 2001–09–04, dated October 10, 2001. When EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001, was issued, the effectivity was revised and additional airplanes were added to the effectivity of the service bulletin. The Brazilian airworthiness directive has not been revised; therefore, the applicability does not match the current effectivity listed in Change 01 of the service bulletin. The applicability of this proposed AD references the effectivity as listed in Change 01 of the service bulletin so all affected airplanes

are addressed. This difference has been coordinated with the DAC.

Cost Impact

The FAA estimates that 290 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,850, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–352–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent sheared air turbine starters (ATS) output shafts, which could result in oil flowing down the engine accessory gear box shafts and dripping into the engine compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off, accomplish the following:

Replacement of ATSs With Modified ATSs

(a) Within 800 flight hours after the effective date of this AD, replace the ATSs with modified ATSs in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001.

Note 1: Honeywell Service Bulletin 3505910–80–1710, Revision 1, dated August 7, 2001, is incorporated within the pages of EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001.

(b) Accomplishment of the specified actions before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–80–0004, dated May 23, 2001, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2001–09–04, dated October 10, 2001.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31181 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707 and 720 series airplanes. This proposal would require repetitive inspections of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting of each main landing gear for corrosion, cracks, and loose or missing nuts and bolts; torque checks of the upper and lower bolts to verify the torque is within a specified range; and corrective actions, if necessary. This action is necessary to detect and correct cracking and/or loss of the barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–335–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–335–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that one operator found cracks in the barrel nut that attaches the aft trunnion bearing cap of the main landing gear to the trunnion support fitting and that another operator discovered that the barrel nut and bolt were missing, on Boeing Model 707 series airplanes. The cause of the cracking is stress corrosion. This condition, if not detected and corrected, could result in cracking and/or loss of the barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing 707/720 Alert Service Bulletin A3509, dated June 13, 2002, which describes procedures for performing repetitive detailed inspections of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting of each main landing gear for corrosion, cracks, and loose or missing nuts and bolts; torque checks of the upper and lower bolts to verify the torque is within the specified range; and corrective actions, if necessary. The corrective actions consist of performing a detailed inspection of the aft trunnion bearing cap and aft trunnion support fitting for corrosion, and repair if necessary; performing a magnetic particle inspection of the aft trunnion bearing cap for cracks, and replacement if necessary; and reinstalling the main landing gear trunnion with new Inconel barrel nuts and bolts to retain the aft trunnion support fitting. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 230 airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed detailed inspection of the upper and lower barrel nuts and bolts and the torque check. The average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $2,730, or $65 per airplane, per inspection and torque check.

It would take approximately 3 work hours per airplane to accomplish the proposed detailed inspection of the aft trunnion bearing cap. The average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $8,190, or $195 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed installation of the new Inconel barrel nut and bolt and the main landing gear trunnion. The average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $10,920, or $260 per airplane.

Required parts would cost approximately $3,380 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–335–AD.

Applicability: Model 707 and 720 series airplanes, as listed in Boeing 707/720 Alert Service Bulletin A3509, dated June 13, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking and/or loss of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing 707/720 Alert Service Bulletin A3509, dated June 13, 2002.

Initial Inspection

(b) Within 60 days after the effective date of this AD, for each main landing gear, perform the inspection specified in paragraph (b)(1) of this AD and the torque check specified in paragraph (b)(2) of this AD, in accordance with the service bulletin.

(1) Perform a detailed inspection of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting for corrosion, cracks, and loose or missing nuts and bolts.

(2) Torque check the upper and lower bolts to verify the torque is within the range specified in Figure 2 of the service bulletin.

Repetitive Inspections

(c) If no corrosion, crack, or loose or missing nut or bolt is found, and the torque is found to be within the specified range, during the inspection and torque check specified in paragraph (b) of this AD, then repeat the actions specified in paragraph (b) of this AD thereafter at intervals not to exceed 60 days.

Corrective Actions

(d) If any corrosion, crack, or loose or missing nut or bolt is found, or if the torque is found not to be within the specified range, during the inspection and torque check specified in paragraph (b) of this AD: Before further flight, do the corrective actions specified in paragraphs (d)(1) through (d)(3) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive inspections specified in paragraph (c) of this AD.

(1) Perform a detailed inspection of the aft trunnion bearing cap and aft trunnion support fitting for corrosion, in accordance with the service bulletin. If any corrosion is detected, before further flight, repair in accordance with the service bulletin.

(2) Perform a magnetic particle inspection of the aft trunnion bearing cap for cracks in accordance with Figure 3 of the service bulletin.

(i) If no crack is found, before further flight, reinstall the inspected aft trunnion bearing cap in accordance with the service bulletin.

(ii) If any crack is found, before further flight, replace the aft trunnion bearing cap with a new aft trunnion bearing cap in accordance with the service bulletin.

(3) Reinstall the main landing gear trunnion with new Inconel barrel nuts and bolts to retain the aft trunnion support fitting, in accordance with Figure 4 of the service bulletin.

Terminating Action

(e) Within one year after the effective date of this AD, for each main landing gear, replace the upper and lower steel barrel nuts and H–11 bolts that retain the aft trunnion support fitting with new Inconel barrel nuts and bolts as specified in paragraphs (d)(1) through (d)(3) of this AD. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Parts Installation

(f) As of the effective date of this AD, no person shall install a steel barrel nut with H–11 bolt to retain the aft trunnion support fitting, on any airplane.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31180 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. That AD also provides an optional terminating action for the repetitive inspections. This action would reinstate repetitive inspections in certain areas where corrosion was detected and reworked as required by the existing AD. The actions specified by the proposed AD are intended to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–175–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–175–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at

the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Anthony Jopling, Program Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–175–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–175–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 21, 1998, the FAA issued AD 98–09–20, amendment 39–10501 (63 FR 23377, April 29, 1998), applicable to certain Airbus Model A310 series airplanes, to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracks around and under the chafing plates of the wing root; and corrective actions, if necessary. That AD also provides an optional terminating action for the repetitive inspections. That action was prompted by notification from the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, that it received reports of the presence of corrosion under the chafing plates and around the fasteners of the wing root between fuselage frames 36 and 39. The requirements of that AD are intended to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Although AD 98–09–20 provides an optional terminating action for repetitive inspections for fatigue cracking around and under the chafing plates of the wing root, it has been determined that repetitive inspections for fatigue cracking are still necessary on the left and right sides of frame 39, stringer 35, if any corrosion was reworked in this area.

Explanation of Relevant Service Information

Since the issuance of AD 98–09–20, Airbus has issued Service Bulletin A310–53–2069, Revision 02, dated September 23, 1996; Revision 03, dated October 28, 1997; and Revision 04, dated November 8, 2000. These service bulletins describe the same procedures as specified in Airbus Service Bulletin A310–53–2069, Revision 01, dated September 19, 1995, for repetitive inspections to detect corrosion and fatigue cracks around and under the chafing plates of the wing root between fuselage frame 36 and frame 39. These service bulletins also include the same procedures for follow-on and corrective actions as Service Bulletin A310–53–2069, Revision 01. The corrective actions include reworking corroded areas, oversizing and reaming holes, installing doublers, and performing a high frequency eddy current inspection and an x-ray inspection. Revision 01 of the service bulletin is cited in AD 98–09–20 as the appropriate source of service information.

Airbus has also issued Service Bulletin A310–53–2070, Revision 02, dated November 8, 2000, which describes procedures for replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy. Accomplishment of this service bulletin eliminates the need for the repetitive inspections for fatigue cracking, unless corrosion was detected and reworked on the left and/or right side of frame 39, stringer 35. If corrosion was detected and reworked in this area, repetitive inspections for fatigue cracking are still necessary. The original issue of this service bulletin, dated October 3, 1994, is cited in AD 98–09–20 as an acceptable source of service information for the optional terminating action.

The DGAC classified Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000, as mandatory and issued French airworthiness directive 2000–514–326(B) R1, dated May 15, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–09–20 to continue to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. The inspections would be required to be accomplished in accordance with Airbus Service Bulletin A310–53–2069, Revision 04; Revision 03; Revision 02; or Revision 01; described previously; except as discussed below. The replacement of the chafing plates would be required to be accomplished in accordance with Airbus Service Bulletin

A310–53–2070, Revision 02; Revision 01, dated September 23, 1996; or Original Issue; described previously; except as discussed below. This action would reinstate repetitive inspections for fatigue cracking at frame 39, stringer 35, if corrosion was detected and reworked in this area.

Differences Among Proposed Rule, Service Information, and French Airworthiness Directive

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Also, operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for reporting inspection results to the manufacturer, this proposed AD would not require such reporting. The FAA does not need this information from operators.

Cost Impact

There are approximately 46 airplanes of U.S. registry that would be affected by this proposed AD. This proposed AD adds no new requirements. It requires continuation of repetitive inspections for airplanes where corrosion was detected and reworked at frame 39, stringer 35. The current costs associated with this proposed AD are reiterated in their entirety as follows for the convenience of affected operators:

The inspections that are currently required by AD 98–09–20 take approximately 68 work hours per airplane to accomplish at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $4,420 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10501 (63 FR 23377, April 29, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–175–AD. Supersedes AD 98–09–20, Amendment 39–10501.

Applicability: Model A310 series airplanes on which Airbus Modifications 8888 and 8889 have not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and corrosion around and under chafing plates of the wing root between fuselage frame 36 and frame 39, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–09–20

Repetitive Inspections and Corrective Actions

(a) Except as provided by paragraph (b) of this AD: Within 4 years since date of manufacture, or within 12 months after June 3, 1998 (the effective date of AD 98–09–20, amendment 39–10501), whichever occurs later, perform an inspection to detect discrepancies around and under the chafing plates of the wing root, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 02, dated September 23, 1996; or Revision 01, dated September 19, 1995. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions (*i.e.*, removal of corrosion, corrosion protection, high frequency eddy current inspection, x-ray inspection), as applicable, in accordance with the applicable service bulletin. Repeat the inspections thereafter at the intervals specified in the applicable service bulletin. After the effective date of this AD, repeat the inspections thereafter at the intervals specified in Revision 04 of the service bulletin.

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, and Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 02, dated September 23, 1996; or Revision 01, dated September 19, 1995; as applicable; specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

New Requirements of This AD

Optional Terminating Action

(c) Except as provided by paragraph (d) of this AD: Accomplishment of the replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy, in accordance with Airbus Service Bulletin A310–53–2070, Revision 02, dated November 8, 2000; Revision 01, dated September 23, 1996; or the Original Issue, dated October 3, 1994; constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Continuation of Repetitive Inspections

(d) Within 30 days after the effective date of this AD: Do a review of the airplane maintenance records to determine if any corrosion was detected and reworked on the left and/or right side of frame 39, stringer 35, during the accomplishment of any corrective

action or repair specified in paragraphs (a) or (b) of this AD. If any corrective action or repair has been accomplished in this area, perform an inspection for fatigue cracking of frame 39, stringer 35, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000. Do the initial inspection at the threshold specified in Figure 1 of the service bulletin, or within 30 days after the effective date of this AD, whichever is later. Repeat the inspection thereafter at the intervals specified in Figure 1 of the service bulletin. If any discrepancy is found, prior to further flight, accomplish the applicable follow-on corrective actions in accordance with the Accomplishment Instructions of the service bulletin.

Submission of Information Not Required

(e) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2000–514–326(B) R1, dated May 15, 2002.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31179 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136890–02]

RIN 1545–BA90

Transfers To Provide for Satisfaction of Contested Liabilities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations relating to the transfer of indebtedness or stock of a taxpayer or related persons or of a promise to provide services or property in the future to provide for the satisfaction of an asserted liability that the taxpayer is contesting.

FOR FURTHER INFORMATION CONTACT: Norma Rotunno (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed rulemaking by cross-reference to temporary regulations that are the subject of this correction are under section 461(f) of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking by cross-reference to temporary regulations (REG–136890–02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking by cross-reference to temporary regulations (REG–136890–02), which is the subject of FR. Doc. 03–29043, is corrected as follows:

1. On page 65646, column 1, in the preamble, under the subject heading ''Comments and Public Hearing'', paragraph 3, line 8, the language ''March 2, 2003. A period of 10 minutes'' is corrected to read ''March 2, 2004. A period of 10 minutes''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 03–31163 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2003–T–023]

RIN 0651–AB67

Changes in the Requirements for Amendment and Correction of Trademark Registrations

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rule.

SUMMARY: The United States Patent and Trademark Office (''Office'') proposes to amend its rules to eliminate the requirement that a request for amendment or correction of a registration be accompanied by the original certificate of registration or a certified copy thereof, and the requirement that an application to surrender a registration for cancellation be accompanied by the original certificate or a certified copy; and add a requirement that a request for correction of a mistake in a registration be filed within one year of the date of registration.

DATES: To be ensured of consideration, written comments must be received on or before February 2, 2004. No public hearing will be held.

ADDRESSES: The Office prefers that all comments be sent by electronic mail to *TMSection7Comments@uspto.gov.* Written comments may also be submitted by mail or hand delivery to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3514, attention Mary Hannon. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202–3514, from 8:30 a.m. until 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 137; or by e-mail to *mary.hannon@uspto.gov.*

SUPPLEMENTARY INFORMATION: The Office proposes to amend its rules to (1) eliminate the requirement that a request for amendment or correction of a registration be accompanied by the original certificate of registration or a certified copy thereof, and the requirement that an application to surrender a registration for cancellation be accompanied by the original certificate or a certified copy; and (2) add a requirement that a request for correction of a mistake in a registration be filed within one year of the date of registration.

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

One Year Time Limit for Requests for Correction of Registrations

Currently, there is no time limit set forth in §§ 2.174 and 2.175 for filing a request for correction of a mistake in a registration under section 7(g) or 7(h) of the Trademark Act. Some registrants have filed requests to correct an error in a mark years after the date of registration. Granting these requests is harmful to examining attorneys and third parties who search Office records, because they do not have accurate information about existing registrations. Therefore, the Office proposes to amend §§ 2.174 and 2.175 to require that all requests for correction of a registration be filed within one year after the date of registration, even where a mistake in

a registration resulted from an Office error.

Applicants and registrants are advised to carefully review notices of publication, notices of allowance, and certificates of registration to ensure that the data is correct, so that any necessary requests for correction can be filed within one year of the date of registration.

Requirement For Submission of Original Certificate of Registration or Certified Copy

Currently, § 2.172 requires that an application for surrender of a registration for cancellation under section 7 of the Trademark Act be accompanied by the original certificate, if not lost or destroyed. If the original certificate is submitted, the Office will destroy the certificate once the registration is cancelled. If the original certificate does not accompany the request, the Office assumes that the certificate is lost or destroyed, and processes the request for cancellation.

Sections 2.173, 2.174, and 2.175(b) currently require that a request for amendment or correction of a registration under section 7 of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof. The Office amends or corrects the registration by attaching an updated registration certificate, showing the amendment or correction, to the original certificate of registration and to the printed copies of the registration in the Office. *See* 37 CFR 2.173(c), 2.174 and 2.175(c). The Office returns the original registration certificate, or certified copy thereof, with the updated registration certificate attached, to the owner of record. TMEP §§ 1609.01 and 1609.09.

The Office believes that requiring the registrant to submit the original certificate or a certified copy is unnecessary and inefficient. The Office proposes to eliminate this requirement. When amending or correcting a registration, the Office will send the updated registration certificate showing the amendment or correction to the registrant, and instruct the registrant to attach it to the certificate of registration. The Office will also update its own records to show the amendment or correction. The Office will send an updated registration certificate to the owner of record.

Discussion of Specific Rules

The Office proposes to amend §§ 2.172, 2.173, 2.174, 2.175, and 2.176.

The Office proposes to amend § 2.172 to eliminate the requirement that an application to surrender a trademark registration for cancellation be accompanied by the original certificate of registration.

The Office proposes to amend § 2.173 to eliminate the requirement that a request for amendment of a trademark registration be accompanied by the original certificate of registration or a certified copy thereof.

The Office proposes to amend § 2.174 to: (1) Eliminate the requirement that a request for correction of a mistake by the Office in a trademark registration pursuant to section 7(g) of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof; and (2) add a requirement that a request for correction of a mistake by the Office be filed within one year of the date of registration.

The Office proposes to amend § 2.175 to: (1) Eliminate the requirement that a request for correction of a mistake by a registrant in a trademark registration pursuant to section 7(g) of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof; and (2) add a requirement that a request for correction of a mistake by a registrant be filed within one year of the date of registration.

The Office proposes to amend § 2.176 to change ''Examiner of Trademarks'' to ''Post Registration Examiner.''

Rule Making Requirements

Regulatory Flexibility Act

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information and recordkeeping requirements have been reviewed and approved by OMB under OMB Control Number 0651–0009, Trademark Processing. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Office proposes to amend part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Revise § 2.172 to read as follows:

§ 2.172 Surrender for cancellation.

Upon application by the registrant, the Director may permit any registration to be surrendered for cancellation. Application for surrender must be signed by the registrant. When there is more than one class in a registration, one or more entire class(es) but less than the total number of classes may be surrendered. Deletion of less than all of the goods or services in a single class constitutes amendment of registration as to that class (see § 2.173).

3. Amend § 2.173 by revising paragraph (a) to read as follows:

§ 2.173 Amendment of registration.

(a) A registrant may apply to amend a registration or to disclaim part of the mark in the registration. The registrant must submit a written request specifying the amendment or disclaimer. This request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, the registrant must submit a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

* * * * *

4. Revise § 2.174 to read as follows:

§ 2.174 Correction of Office mistake.

(a) Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office, a certificate of correction stating the fact and nature of the mistake, signed by the Director or by an employee designated by the Director, shall be issued without charge and recorded. A printed copy of the certificate of correction shall be attached to each printed copy of the registration certificate. Thereafter, the corrected certificate shall have the same effect as if it had been originally issued in the corrected form. In the discretion of the Director the Office may issue a new certificate of registration without charge.

(b) A request for correction of an Office error in a registration must be filed within one year after the date of registration.

5. Amend § 2.175 by revising paragraphs (a) and (b) to read as follows:

§ 2.175 Correction of mistake by registrant.

(a) Whenever a mistake has been made in a registration and a showing has been made that the mistake occurred in good faith through the fault of the registrant, the Director may issue a certificate of correction. In the discretion of the Director, the Office may issue a new certificate upon payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) Application for such action must:

(1) Be filed within one year after the date of registration;

(2) Include the following:

(i) Specification of the mistake for which correction is sought;

(ii) Description of the manner in which it arose; and

(iii) A showing that it occurred in good faith;

(3) Be signed by the registrant and verified or include a declaration in accordance with § 2.20; and

(4) Be accompanied by the required fee.

* * * * *

6. Amend § 2.176 to read as follows:

§ 2.176 Consideration of above matters.

The matters in §§ 2.171 to 2.175 will be considered in the first instance by the Post Registration Examiner. If the action of the Examiner is adverse, registrant may request the Director to review the action under § 2.146. If the registrant does not respond to an adverse action of the Examiner within six months of the mailing date, the matter will be considered abandoned.

Dated: December 9, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office.

[FR Doc. 03–31904 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–16–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–057–7216d; A–1–FRL–7600–1]

Approval and Promulgation of Implementation Plans; Connecticut; Motor Vehicle Emissions Budgets for 2005 and 2007 Using MOBILE6.2 for the Connecticut Portion of the New York-Northern New Jersey-Long Island Nonattainment Area and for 2007 for the Greater Connecticut Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Connecticut State Implementation Plan (SIP) for the attainment and maintenance of the one-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone submitted by the State of Connecticut. EPA is proposing approval of Connecticut's 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before January 20, 2004.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023.

Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions (Part (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section) described in the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeff Butensky, Environmental Planner, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1665, *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this action, we contemplate no further activity. If EPA receives adverse comments, we will withdraw the direct final rule and we will address all public comments we receive in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 10, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–31233 Filed 12–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 112803A]

RIN 0648–AR74

Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for Secretarial review

Amendment 17 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This amendment would implement a rebuilding plan for the overfished stock of Pribilof Islands blue king crab. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and enhance the Council's ability to achieve, on a continuing basis, optimum yield from fisheries under its authority.

DATES: Comments on the amendment must be submitted on or before February 17, 2004.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 420, Juneau, AK 99801.Copies of Amendment 17 to the FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the above address.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS declared the Pribilof Islands stock of blue king crab (*Paralithodes platypus*) overfished because the spawning stock biomass was below the minimum stock size threshold defined in Amendment 7 to the FMP. Amendment 7 specified objective and measurable criteria for identifying when any of the crab fisheries covered by the FMP are overfished or when overfishing is occurring (64 FR 11390, March 9, 1999).

On September 23, 2002, NMFS notified the Council that the Pribilof Islands blue king crab stock was overfished (67 FR 62212, October 4, 2002). The Council then took action to develop a rebuilding plan within 1 year of notification as required by section 304(e)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In October 2003, the Council adopted Amendment 17, the rebuilding plan, to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock.

Amendment 17 specifies a time period for rebuilding the stock intended to satisfy the requirements of the Magnuson-Stevens Act. Under the rebuilding plan, the Pribilof Islands blue king crab stock is estimated to rebuild, with a 50–percent probability, within 10 years. The stock will be considered ''rebuilt'' when it reaches the maximum sustainable yield stock size level in 2 consecutive years. This rebuilding time period is as short a possible and takes into account the status and biology of the stock, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem, as required by the Magnuson-Stevens Act in section 304(e)(4)(A)(i).

The rebuilding plan consists of a framework that references the State of Alaska's harvest strategy. Section 8.3 of the FMP defers to the State of Alaska the authority to develop and implement harvest strategies, with oversight by NMFS and the Council. The rebuilding harvest strategy, and alternative harvest strategies, were developed and analyzed by the Alaska Department of Fish and Game and reviewed and adopted by the Alaska Board of Fisheries. The rebuilding harvest strategy, and detailed alternatives analysis, were reviewed by the Council, its Scientific and Statistical Committee, and Crab Plan Team for consistency with the FMP, Magnuson-Stevens Act, and the National Standard guidelines. The analysis prepared for the rebuilding harvest strategy is contained in the EA prepared for this action.

The rebuilding harvest strategy, which closes the directed fishery until the stock is rebuilt, should result in more spawning biomass than allowing a fishery during rebuilding, because more large male crab would be conserved and fewer juveniles and females would die due to incidental catch and discard mortality. More spawning biomass would be expected to produce larger year-classes when environmental conditions are favorable.

This conservative rebuilding plan is warranted at this time for this stock given the concerns regarding the rebuilding potential of this stock, the potential vulnerability to overfishing, and the poor precision of survey estimates. The other alternatives under consideration, which would allow fishing prior to stock rebuilding, would not provide sufficient safeguards for this vulnerable stock. The preferred alternative, while forgoing harvest in the short-term, is the strongest guarantee that the stock will be healthy and support a fishery in the long term. Once rebuilt, fishing communities would once again have expanded opportunities (both fishing and processing) in this potentially lucrative fishery. As this rebuilding plan applies the same restrictions to all participants, the plan allocates the fishery restrictions fairly and equitably among sectors of the fishery. Likewise, the plan allocates all recovery benefits fairly and equitably among sectors of the fishery.

No additional habitat or bycatch measures are part of this rebuilding plan because neither habitat nor bycatch measures are expected to have a measurable impact in rebuilding. Habitat is protected from fishing impacts by the existing Pribilof Islands Habitat Conservation Zone, which encompasses the majority of blue king crab habitat. Bycatch of blue king crab in both crab and groundfish fisheries is a negligible proportion of the total population abundance.

An EA was prepared for Amendment 17 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

The Magnuson-Stevens Act requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for FMP Amendment 17. NMFS will consider public comments received during the comment period in determining whether to approve this FMP amendment. To be considered, a comment must be received by close of business by the last day of the comment period (see **DATES**), regardless of the comment's postmark or transmission date.

Dated: December 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31226 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 243
Thursday, December 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Krassel and McCall Ranger Districts, Idaho; and Boise National Forest, Cascade Ranger District, Idaho; South Fork Salmon River Subbasin Noxious Weed Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for management of noxious and invasive weeds in the South Fork Salmon River (SFSR) Subbasin. The analysis area of approximately 788,660 acres includes headwater streams to the Salmon River and includes portions of the Boise National Forest (BNF) and Payette National Forest (PNF) in central Idaho. The subbasin is immediately adjacent to and upstream of the Frank Church River of No Return (FC–RONR) Wilderness. The purpose of the proposed project is to identify and treat noxious and invasive weeds using a variety of methods including herbicide application by hand and aerial spraying. The need is to minimize the impacts of noxious and invasive weeds. The EIS will disclose the environmental effects of the proposed action and alternatives. The Forest Service now invites comments on the scope of the analysis and the issues to address.

DATES: Comments must be received by January 19th, 2004. The Draft EIS is expected in October 2004, and the Final EIS is expected in April 2005.

ADDRESSES: Send written comments to: District Ranger, Krassel Ranger District, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Ana Egnew, Krassel Ranger District, P.O. Box 1026, McCall, Idaho 83638 or phone (208) 634–0600.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed project is to:

- Prioritize weed species and treatment areas;
- Identify and treat weed infestations using a variety of methods including herbicide application by hand and aerial spraying;
- Prevent or limit the introduction and establishment of noxious and invasive weed species; and
- Maintain native plant communities and watershed function.

The SFSR Subbasin is an ecologically important, relatively pristine area where the spread of noxious and invasive weeds could result in unacceptable consequences on fish and wildlife habitat, recreation, and other resources.

Proposed Action

The overall management objective of the proposed action is to maximize the treatment of noxious and invasive weeds throughout the SFSR Subbasin. The proposed action would prioritize noxious and invasive weed species and treatment areas within the Subbasin based on the following goals:

1. Treat all known sites less than 5 acres in size with the goal of eradication.
2. Reduce all established areas of noxious and invasive weeds greater than 5 acres in size by 50 percent.

Treatment would begin by determining the minimum tool necessary to achieve management objectives (see below). Treatment methods would include removal by hand pulling and shovel, herbicide treatment by hand, herbicide treatment with truck mounted equipment, aerial application of herbicides, and biological control. Limits would be placed on the type, amount, and location of herbicide use. Noxious and invasive weed management would also include education and preventive measures such as area closures and weed-free hay requirements and inspections. Weeds would be treated on a maximum area of 3,000 acres each year in the SFSR Subbasin. The distribution of treatment acres between ground application, aerial application, and mechanical treatment, and biological control would likely vary on a yearly basis; however, it is expected that ground application would dominate.

The minimum tool approach means that managers would use the minimum necessary weed treatment method(s) to accomplish management objectives.

The minimum tool approach would be implemented on a site-specific basis. A number of steps would be followed to determine and implement the most appropriate site-specific treatment method including:

- Detection of the weed;
- Prioritization of weed treatment at a particular site;
- Determination if sensitive environmental receptors are present;
- Consideration of potential for adverse effects;
- Determination of the treatment methods, including minimum tool method;
- Selection of appropriate treatment method for the weed; and
- Treatment followed by restoration and monitoring, as necessary.

Possible Alternatives

A ''No Action'' alternative is required under NEPA regulations and also serves as a baseline for comparison of other alternatives. The No Action Alternative would be no chemical treatment, because no environmental analysis has ever been completed for noxious weed treatment in the SFSR Subbasin. Another alternative to be considered would include the same noxious weed treatment methods that are used on the remainder of the Payette National Forest.

Scoping Process

The Forest Service is seeking comments from individuals, organizations, Tribal governments, and federal, state, and local agencies interested in or affected by this project. Public participation will be solicited through news releases, scoping meetings and requests for written comments. The first formal opportunity to comment is to respond to this notice of intent, which initiates the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying potential issues, (2) identifying significant issues, (3) exploring alternatives, and (4) identifying potential environmental effects of the proposed action and alternatives.

Preliminary Issues

The Forest Service has identified the following nine potential issues. Public

input will help determine which of these issues and what other issues merit detailed analyses.

- Issue 1—*Water Quality:* Effects to water quality.
- Issue 2—*Soil*: Effects to soil productivity.
- Issue 3—*Fisheries Resources:* Effects to listed species.
- Issue 4—*Vegetation:* Effects on native plant communities and rare plants.
- Issue 5—*Fire and Fuels:* Effects on fire regimes and spread of weeds due to fire.
- Issue 6—*Wildlife Resources:* Effects on big game, listed species, Forest Service sensitive species, and PNF and BNF Management Indicator Species (MIS).
- Issue 7—*Recreation:* Effects to inventoried Roadless Areas, Wild and scenic Rivers, adjacent Wilderness, and visual resources.
- Issue 8—*Cultural Resources:* Effects of treatment methods on cultural resources, particularly Traditional Cultural Properties (TCP).
- Issue 9—*Human Health:* Effects of herbicide use on human health.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the EIS. To assist the Forest Service in identifying and considering issues and alternatives, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be part of the project record and will be available for public inspection.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Draft EIS is proposed to be available for public comment in October of 2004. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft EISs must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.,* v *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodell,* 803 F .2d 1016, 1002 (9th Cir. 1986), and *Wisconsin Heritages, Inc.,* v. *Harris*, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest service at a time when it can meaningfully consider them and respond to them in the final EIS.

Nature of Decision To Be Made

This decision will be whether or not to implement specific noxious weed management activities in the SFSR Subbasin, and if so, what types of weed treatments would be implemented. The decision would include any mitigation measures needed in addition to those prescribed in the Forest Plans.

Responsible Official

I am the responsible official for the preparation of the EIS. The deciding officials for the decision to accompany the Final EIS are: Mark J. Madrid, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83628; and Richard A. Smith, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, Idaho 83709.

Dated: December 12, 2003.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 03–31190 Filed 12–17–03; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of a deadly explosion and the leakage of 26,000 pounds of aqua ammonia into the atmosphere from the DD Williamson & Co., Inc. plant in Louisville, Kentucky on April 11, 2003, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a public meeting beginning at 9:30 a.m. local time on January 14, 2004, at the Galt House, 140 North Fourth Street, Louisville, KY, 40202—telephone: (502) 568–5200.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations. The CSB staff presentation will focus on three key safety issues: overpressure protection, hazard evaluation systems, and engineering at small facilities.

This incident occurred at 2:10 a.m. on Friday, April 11, 2003, when a vessel explosion at the DD Williamson plant killed an operator and caused extensive damage to the western end of the facility. As a consequence of the explosion, 26,000 pounds of aqua ammonia (29.4% ammonia solution in water) leaked into the atmosphere, forcing the evacuation of 26 residents. The DD Williamson plant employs approximately 45 people and is located in a mixed industrial and residential neighborhood approximately 1.5 miles east of downtown Louisville.

Recommendations proposed in the investigative report are issued by a vote of the Board and address identified safety deficiencies uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard

Investigation Board at (202) 261–7600, or visit our Web site at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 03–31330 Filed 12–16–03; 12:52 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of 2001–2002 Administrative Review and Partial Rescission of the Review.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2001, through May 31, 2002. We are also rescinding the review, in part, in accordance with 19 CFR § 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled ''Final Results of the Review.'' Based on these final results of review, we will instruct the U.S. Customs and Border Protection to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: December 18, 2003.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso or Andrew R. Smith, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3853 or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2003, the Department published the preliminary results of this review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003) (''*Preliminary Results*''). The period of review (''POR'') is June 1, 2001, through May 31, 2002. This review covers the following producers or exporters (referred to collectively as ''the respondents''): Wanxiang Group Corporation (''Wanxiang''), China National Machinery Import & Export Corporation (''CMC''), Tianshui Hailin Import and Export Corporation (''Hailin''), Luoyang Bearing Corporation (Group) (''Luoyang''), Liaoning MEC Group Co. Ltd. (''Liaoning''), Peer Bearing Company - Changshan (''CPZ''), and Yantai Timken Co., Ltd. (''Yantai Timken'')

We invited parties to comment on the *Preliminary Results*. On March 17, 2003, we received case briefs from the Timken Company (''the petitioner''), CPZ, and Yantai Timken. On March 24, 2003, the Timken Company and Yantai Timken submitted rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Scope of Review

Merchandise covered by this review is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, on September 10, 2002, Hailin, Wanxiang, Luoyang, Liaoning, and CMC withdrew their requests for review. The petitioner did not request reviews of any of these companies. Therefore, pursuant to 19 CFR § 351.213(d)(1), because these companies withdrew their requests for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the review with respect to Hailin, Wanxiang, Luoyang, Liaoning, and CMC.

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companies which did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies that did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the rate of 33.18 percent to companies that are part of the PRC-entity.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary, Import Administration, dated December 11, 2003 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, located in Room B-099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''China PRC.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the calculations for

the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memoranda for particular companies:

All Companies

Certain adjustments were made to the overhead, SG&A, and profit ratios. *See Decision Memorandum* at Comment 5.

CPZ

In the *Preliminary Results* we used data on Japanese exports to India to value the hot-rolled alloy steel used by CPZ to manufacture the subject merchandise. For these final results, we revised this surrogate value. Instead, we relied on data for Japanese exports to Indonesia to value the hot-rolled alloy steel used to manufacture the subject merchandise. *See Decision Memorandum* at Comment 3 and the Memorandum from Team to Susan Kuhbach: ''Factors of Production Values Used for the Final Results,'' dated December 11, 2003.

Yantai Timken

We revised Yantai Timken's final results calculations to correct several minor reporting and clerical errors noted by Yantai Timken in its case brief. *See* Memorandum from Case Analyst to File, ''Final Results Calculation Memorandum for Yantai Timken Company, Ltd.'' (''*Yantai Timken's Calc Memo*''), dated December 11, 2003, which is on file in the Department's CRU.

As noted in the *Preliminary Results*, and consistent with our treatment of subsidized inputs in *TRBs XIV*, *TRBs XIII*, and *TRBs XII*, we do not use the prices paid by PRC producers of TRBs for inputs that we have a reason to believe or suspect are subsidized. Accordingly, for a particular input that Yantai Timken purchased from a market economy country, for these final results, we have used a surrogate value instead of the market price paid by Yantai Timken and used in the *Preliminary Results*. (*See Yantai Timken's Calc Memo* for a more detailed discussion of this issue.)

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage
Peer Bearing Company - Changshan	0.00
Yantai Timken Co., Ltd.	18.75
PRC-wide rate	33.18

Assessment Rates

In accordance with 19 CFR § 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR § 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (''CBP'') within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of these final results for all shipments of TRBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5%, and therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: December 11, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Peer Bearing Company - Changshan's (''CPZ'') Market Economy Steel
Comment 2: Valuing the Steel Input Used by CPZ to Manufacture Cups and Cones
Comment 3: Cups and Cones Surrogate Value: Japanese Exports to India Versus to Indonesia
Comment 4: Correct the Surrogate Value Calculated Using Japanese Exports to India
Comment 5: Financial Ratios: HMT's Financial Records and Calculate Using a Simple Average
Comment 6: Discontinue Excluding Negative Dumping Margins
Comment 7: Amelioration of the Anomalous Situation Arising from the

Petitioner Owning 100% of Yantai Timken
Comment 8: Yantai Timken Reported Steel Values Clerical Error
Comment 9: Yantai Timken Packing Values Clerical Error
Comment 10: Yantai Timken Part-Specific Costs

[FR Doc. 03–31223 Filed 12–17–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 03–00006.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Western Fruit Exporters, LLC (''WFE''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

I. Export Trade

1. Products

Brine sweet cherries in any stage of processing and finished maraschino cherry products in any stage of packaging.

2. Services

Inspection, quality control, marketing and promotional services.

3. Technology Rights

Proprietary rights to all technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, trade secrets, know-how.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

All export trade-related facilitation services, including, but not limited to: Consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; communication and processing of export orders; inspection and quality control; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff, legal, accounting and tax assistance; management information systems development and application; assistance and administration related to participation in government export assistance programs.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products, Services, and/or Technology Rights into the Export Markets, WFE and/or one or more of its Members may:

1. Design and execute foreign marketing strategies for its Export Markets;

2. Prepare joint bids, establish export prices for Members' Products and Services, and establish terms of sale in Export Markets in connection with potential or actual bona fide opportunities;

3. Grant sales and distribution rights for the Products, whether or not exclusive, into designated Export Markets to foreign agents or importers (''exclusive'' meaning that WFE and/or one or more Members may agree not to sell the Products into the designated Export Markets through any other foreign distributor, and that the foreign distributor may agree to represent only WFE and/or one or more Members in the Export Markets and none of its competitors);

4. Design develop and market generic corporate labels for use in Export Markets;

5. Engage in joint promotional activities directly targeted at developing Export Markets, such as: arranging trade shows and marketing trips; providing advertising services; providing brochures and industry newsletters; providing product, service, and industry information; conducting international market and product research; and procuring, international marketing, advertising, and promotional services;

6. Share the cost of joint promotional activities among the Members;

7. Conduct product and packaging research and development exclusively for export in order to meet foreign regulatory requirements, foreign buyer specifications, and foreign consumer preferences;

8. Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade barriers in Export Markets such as packaging requirements, and providing specialized packing operations and other quality control procedures to be followed by WFE and Members in the export of Products into the Export Markets;

9. Assist each other in maintaining the quality standards necessary to be successful in the Export Markets;

10. Provide Export Trade Facilitation Services with respect to Products, Services and Technology (including such items as commodity fumigation, refrigeration and storage techniques, and other quality control procedures to be followed in the export of Products in Export Markets;

11. Advise and cooperate with agencies of the United States government in establishing procedures regulating the export of the Members' Products, Services and/or Technology Rights in Export Markets;

12. Negotiate and enter into purchase agreements with buyers in Export Markets regarding export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;

13. Broker or take title to Products intended for Export Markets;

14. Purchase Products from non-Members to fulfill specific sales obligations, provided that WFE and/or one or more Members shall make such purchases only on a transaction-by-transaction basis and when the purchasing Members are unable to

supply, in a timely manner, the requisite Products at a price competitive under the circumstances;

15. Solicit non-Member producers to become Members;

16. Communicate and process export orders;

17. Procure, negotiate, contract, and administer transportation services for Products in the course of export, including overseas freight transportation, inland freight transportation from the packing house to the U.S. port of embarkment, leasing of transportation equipment and facilities, storing and warehousing, stevedoring, wharfage and handling, insurance, and freight forwarder services;

18. Arrange for trade documentation and services, customs clearance, financial instruments, and foreign exchange;

19. Arrange financing through private financial entities, government financial assistance and incentive programs and other arrangements;

20. Bill and collect monies from foreign buyers, and arrange for or provide accounting, tax, legal and consulting services in relation to Export Trade Activities and Methods of Operation;

21. Enter into exclusive agreements with non-Members to provide Export Trade Services and Export Trade Facilitation Services;

22. Open and operate overseas sales and distribution offices and companies to facilitate the sales and distribution of Products in the Export Markets;

23. Negotiate and enter into agreements with governments and foreign persons to develop countertrade arrangements, provided that this Certificate does not protect any conduct related to the sale of goods in the United States that are imported as part of any countertrade transactions;

24. Refuse to deal with or provide quotations to other Export Intermediaries for sales of Members' Products into Export Markets;

25. Require common marking and identification of Members' Products sold in Export Markets;

26. Exchange information as necessary to carry out Export Trade Activities and Methods of Operation, including:

(a) Information about sales, marketing efforts, and sales strategies in Export Markets, including pricing; projected demand in Export Markets for Products; customary terms of sale; and foreign buyer and consumer product specifications;

(b) Information about the price, quality, quantity, source and delivery dates of Products available from WFE and its Members for export;

(c) Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WFE and/or Members;

(d) Information about joint bidding opportunities;

(e) Information about methods by which export sales are to be allocated among WFE and/or Members;

(f) Information about expenses specific to exporting to and within Export Markets, including transportation, transshipments, inter-modal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;

(g) Information about U.S. and foreign legislation and regulations, including federal marketing order programs that may affect sales to Export Markets;

(h) Information about WFE's or Members' export operations, including sales and distribution networks established by WFE or Members in Export Markets, and prior export sales by Members, including export price information; and

(i) Information about claims or bad debts by WFE's or Members' customers in Export Markets.

IV. Definitions

''Export Intermediary'' means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

V. Members (Within the Meaning of Section 325.2(l) of the Regulations)

Eola Cherry Company, Inc., Gervais, Oregon; Diana Fruit Co., Inc., Santa Clara, California; Johnson Foods Co., Inc., Sunnyside, Washington; and Oregon Cherry Growers, Inc., Salem, Oregon.

VI. Terms and Conditions of Certificate

1. Neither WFE nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (*e.g.*, price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchasing Member.

2. Each Member shall determine independently of WFE and each other the quantity of Products each will make available for export or sell through WFE. WFE may not require any Member to accept any offer for sale or require any Member to export any minimum quantity of Products.

3. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing) shall be in connection only with actual or potential bona fide export transactions or opportunities and shall include only those Members participating or having a genuine interest in participating in such transactions or opportunities, provided that WFE and/or the Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard setting organizations.

4. Meetings at which WFE and Members allocate export sales and establish export prices shall not be open to the public.

5. Participation by WFE and/or Members in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to WFE and/or the Members, subject to the honoring of contractual commitments for sales of Products, Services or Technology Rights in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to WFE, a copy of which WFE shall promptly transmit to the Secretary of Commerce and the Attorney General.

6. WFE and the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

VII. Protection Provided by Certificate

This Certificate protects WFE and its directors, officers, and employees acting on its behalf, as well as its Members,

and their directors, officers, and employees acting on their behalf, from private treble damage actions and governmental criminal and civil suits under U.S. Federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

VIII. Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified or revoked as provided in the Act and the Regulations.

IX. Other Conduct

Nothing in this Certificate prohibits WFE and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

X. Disclaimer

The issuance of this Certificate of Review to WFE by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of WFE or its Members or (b) the legality of such business plans of WFE or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V(D) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985) (''Guidelines'').

In accordance with the authority granted under the Act and Regulations, this Export Trade Certificate of Review is hereby granted to Western Fruit Exporters, L.L.C.

The effective date of the Certificate is December 8, 2003. A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 15, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–31323 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2004

December 12, 2003.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2004 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2004 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 as amended by the Trade Act of 2002. The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 (The Act) as amended by the Trade Act of 2002 creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 4,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 3,500,000 square meters per year. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001, the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 CFR 335.

On August 28, 2003, the Department published a notice in the **Federal Register** (68 FR 51767) soliciting applications for an allocation of the 2004 tariff rate quotas with a closing date of September 29, 2003. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 13 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 14 firms. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

FIRMS THAT RECEIVED ALLOCATIONS:

HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.60 and 5112.19.95). Amount allocated: 4,500,000 square meters.

Companies Receiving Allocation:

Bowdon Manufacturing Co., Inc--Bowdon, GA
Calvin Clothing Company, Inc.--Scranton, PA
Hartmarx Corporation--Chicago, IL
Hartz & Company, Inc.--Frederick, MD
Hugo Boss Cleveland, Inc-Brooklyn, OH
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Majer Brands Company, Inc.-Hanover, PA
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
Toluca Garment Company-Toluca, IL
The Tom James Co.--Franklin, TN

HTS 9902.51.12, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.30 and 5112.19.60). Amount allocated: 3,500,000 square meters.

Companies Receiving Allocation:

American Fashion, Inc.--Chula Vista, CA
Retail Brand Alliance, Inc. d/b/a Brooks Brothers--New York, NY
Hartmarx Corporation--Chicago, IL
Hartz & Company, Inc.--Frederick, MD
Hugo Boss Cleveland, Inc.-Brooklyn, OH
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Majer Brands Company, Inc.-Hanover, PA

Martin Greenfield--Brooklyn, NY
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
Toluca Garment Compan-Toluca, IL
The Tom James Co.--Franklin, TN

Dated: December 12, 2003.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc. E3–00584 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103003D]

Marine Mammals; Photography Permit Application No. 1050–1727–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the NOAA Pribilof Islands Restoration Project Office, National Ocean Service, 7600 Sand Point Way, Seattle, WA 98115 [Principal Investigator: John Lindsay] has applied in due form for a permit to take Northern fur seal seals (*Callorhinus ursinus*) for purposes of commercial/educational photography.

DATES: Written or telefaxed comments must be received on or before January 20, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and,

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Jefferies (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving marine mammals in the wild not listed as endangered or threatened. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed marine mammals for photographic purposes.

The applicant proposes to take by harassment up to 2000 northern fur seals each year during ground and underwater filming activities. The purpose of the proposed project is to collect high-definition digital media of contemporary norther fur seals on the Pribilof Islands, particularly breeding and territorial behaviors in a natural setting on rookeries and haulout areas for public television documentary series. The documentary series will combine footage of northern fur seals with original research, photographs and other documents about the history of commercial fur sealing on the Pribilofs with emphasis on key historical figures. The action area is the Pribilof Islands, including St. George, St. Paul, Walrus and Otter Islands and Sea Lion Rock. The Permit would expire 2 years after the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31227 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103103A]

Marine Mammals; File Nos. 704–1698 and 1044–1706

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that the following applicants have been issued permits to take marine mammals parts from species of marine mammals under NMFS jurisdiction for purposes of scientific research: (1) The University of Alaska Museum, 907 Yukon Drive, P.O. Box 756960, Fairbanks, AK 99775 (Dr. Gordon Jarrell, Principal Investigator (PI)); and (2) The Alaska Sea Otter and Steller Sea Lion Commission (TASSC), 6239 B Street, Suite 204, Anchorage, AK 99518 (Dr. Dolly Garza, PI).

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 8, 2003, notice was published in the **Federal Register** (68 FR 52905) that requests for scientific research permits to take marine mammal parts had been submitted by the above-named organizations. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531

et seq.), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

File No. 704–1698: The University of Alaska Museum is authorized to take, import and export specimen samples (whole carcasses; hard and soft parts) from all marine mammal species (pinnipeds and cetaceans) under NMFS jurisdiction. The objective of this permit is to archive specimens for future bona fide research at the University of Alaska and other institutions in the U.S. and world-wide.

File No. 1044–1706: TASSC is authorized to take, import and export parts and tissues from marine mammals taken from legally subsistence hunted Steller sea lions and other species. The objectives of this research are to promote Alaska Native participation in Steller sea lion conservation and management; assess the health and condition of Steller sea lions through biological data and tissue collection; educate and inform the public on the traditional and contemporary relationship between the Steller sea lion and Alaska Natives; and work with regulatory agencies toward the common goal of enhancing and protecting healthy Steller sea lion populations.

Issuance of these permits, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of these permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 12, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31228 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Belarus

December 12, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated January 10, 2003 between the Governments of the United States and Belarus establishes limits for the period January 1, 2004 through December 31, 2004.

These limits may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004:

Category	Twelve-month restraint limit
622	9,646,000 square meters of which not more than 1,590,000 square meters shall be in Category 622-L [1].
435	67,320 dozen.
448	34,680 dozen.

[1] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

Products in the above categories exported during 2003 shall be charged to the applicable category limit and sublimit for that year (see directive dated January 21, 2003) to the extent of any unfilled balance. In the event the limit and sublimit established for that period have been exhausted by previous entries, such products shall be charged to the limit and sublimit set forth in this directive.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limits may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00585 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

In the Matter of Intermarket Clearing Corporation—Request for Vacation From Designation as Derivatives Clearing Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed order.

SUMMARY: In response to a request by the Intermarket Clearing Corporation (''ICC''), the Commodity Futures Trading Commission (''Commission'' or

''CFTC'') is proposing to issue an order vacating ICC's designation as a Derivatives Clearing Organization (''DCO'').

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''ICC''.

DATES: Comments must be received by December 23, 2003.

FOR FURTHER INFORMATION CONTACT: R. Trabue Bland, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430. E-mail: *tbland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 5b(d) of the Commodity Exchange Act [1] provides that DCOs that clear contracts for boards of trade designated by the Commission as contract markets prior to a certain date are deemed registered with the Commission. Under section 1a(29)(C) of the Act, registered DCOs are ''registered entities.'' Section 7 of the Act [2] provides that ''any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.'' ICC has requested that the vacation of its registration take place before the expiration of the ninety-day period. In response to the request, the Commission is proposing to exempt ICC from the notice requirements of section 7 of the Act pursuant to section 4(c) of the Act,[3] which gives the Commission broad exemptive authority and then vacate ICC's registration.

II. Request for Vacation of Registration

A. Background

By letter to the Division of Clearing Intermediary Oversight, the ICC submitted a request for the vacation of registration.[4] The ICC is a registered DCO under section 5b(d) of the Act and thus a registered entity as defined in section 1a(29)(C) of the Act. The ICC is a wholly owned subsidiary of The Options Clearing Corporation (''OCC''), another registered DCO. For the past several years, ICC has not engaged in any clearing activities, and thus the OCC wishes to merge the ICC into the OCC. At the completion of the merger, ICC will cease to exist as a corporate entity. Therefore, the ICC requests that the Commission vacate the registration of ICC as a DCO.

Section 7 of the Act allows ''any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.'' ICC served notice to the Commission on November 17, 2003. However, the merger of ICC and OCC will take place before the end of the calendar year 2003, which will occur before the expiration of the ninety-day notice requirement required by section 7 of the Act. Therefore, at ICC's request, pursuant to section 4(c) of the Act, the Commission proposes to exempt ICC from section 7's 90-day notice requirement.

B. Public Interest Considerations

This proposed order is waiving the section 7 90-day notice requirement pursuant to section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission ''may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of section 4(a) of the Act, or any other provision of the Act * * * if the Commission determines that the exemption would be consistent with the public interest.'' [5]

As explained above, the ICC has not operated as a clearing entity in a number of years. The merger of ICC into OCC will allow the OCC to streamline its operations. The Commission believes that exempting ICC from the 90-day requirement of section 7 is consistent with the public interest, is consistent with the purposes of the Act and would have no adverse effect on the ability of OCC to fulfill its self-regulatory responsibilities imposed by the Act.

III. Conclusion

After consideration of the ICC request, the Commission is proposing to exempt ICC from the 90-day notice requirement of section 7 of the Act. Furthermore, the Commission proposes to vacate the Intermarket Clearing Corporation's registration as a derivatives clearing organization upon completion of the merger between ICC and OCC.

The Commission specifically invites comment on whether it should vacate the registration of ICC and whether the Commission should exempt ICC from the 90-day notice requirement of section 7. In addition to issues specified above, the Commission welcomes comment on any aspect of the proposed order.

IV. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

[1] 7 U.S.C. 7a–1 (2003).

[2] 7 U.S.C. 11 (2003).

[3] 7 U.S.C. 6c (2003).

[4] The letter, dated November 17, 2003, was sent to John Lawton, Deputy Director and Chief Counsel of the Division of Clearing and Intermediary Oversight.

[5] *See, e.g.* 65 FR 77993 (December 13, 2000) (adopting final rules pursuant to the 4(c) exemption).

accomplish any of the purposes of the Act.

The proposed order is intended to vacate the registration of the ICC, in order to allow the Options Clearing Corporation to merge with the ICC. The Commission has considered the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

1. Protection of Market Participants and the Public

The ICC does not provide any clearing services to any designated contract markets. Accordingly, the proposed order should have no effect on the Commission's ability to protect market participation and the public.

2. Efficiency and Competition

The proposed order is not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

The proposed order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound Risk Management Practices

The proposed order should have no effect on sound risk management practices.

5. Other Public Interest Considerations

The proposed order will have the positive effect of allowing the OCC to streamline its operations.

V. Proposed Order

Upon due consideration, and pursuant to its authority under section 7 of the Act to vacate the designation of a registered entity and pursuant to its authority under section 4(c) of the Act to exempt ICC from the requirement that notice be served within 90 days of vacation, the Commission finds that:

(1) The Intermarket Clearing Corporation (''ICC'') is currently registered with the Commission as a derivatives clearing organization (''DOC'') under section 5b(d) of the Commodity Exchange Act (the ''Act'');

(2) ICC has not engaged in activity as a DCO for several years;

(3) ICC proposes to merge into The Options Clearing Corporation, which is also registered as a DCO;

(4) Upon the effectiveness of that merger, ICC will cease to exist as a corporate entity;

(5) ICC has requested that the Commission terminate ICC's registration as a DCO upon the effectiveness of that merger;

(6) The merger of ICC and OCC will take place before the expiration of the ninety day requirement of section 7 of the Act; and

(7) Exempting ICC from the 90-day requirement of section 7 of the Act will have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act and will be consistent with the public interest.

Therefore, the Commission hereby orders that ICC's designation as a DCO be and hereby is vacated upon the effectiveness of that merger.

Issued in Washington, DC, on December 12, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–31220 Filed 12–17–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Application for Establishment of Air Force Junior ROTC Unit; AFOATS Form 59; OMB Number 0701–0114.

Type of Request: Extension.

Number of Respondents: 1.

Responses per Respondent: 1.

Annual Responses: 40.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 20.

Needs and Uses: The information collection requirement is necessary to obtain information about schools that would like to host an Air Force Junior ROTC unit. Respondents are high school officials who provide information about their school. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit.

Affected Public: Not-For-Profit Institutions; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, Room 10236, new Executive Office Building, Washington DC 20503.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–31169 Filed 12–17–03; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2)

Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 15, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: New.

Title: Application for Grants under the State Charter School Facilities Incentive Grant Program.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

	Responses	Burden hours
Reporting and recordkeeping hour burden:	12	4,800

Abstract: This is a grant application for a program to give States incentive grants to establish new or enhance existing per-pupil facilities aid programs for charter schools.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2424. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31222 Filed 12–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education, Department of Education; Notice of Intent to Award Grantback Funds to the Commonwealth of Massachusetts Department of Education

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Commonwealth of Massachusetts Department of Education (MADOE), under a grantback agreement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) in resolution of findings 42, 51, 54, 57, and 60 of the State's Single Audit Reports for the years ended June 30, 1997 (ACN: 01–97–88064); June 30, 1998 (ACN: 01–98–08038); and June 30, 1999 (ACN: 01–99–08038), respectively. The Department's recovery of funds followed two settlement agreements executed by the parties under which the MADOE refunded $2,432,628 to the Department in full resolution of the findings noted above. The MADOE has submitted to the Department a grantback application in accordance with section 459(a) of GEPA. This notice describes the MADOE's plan for use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice also invites comments on the proposed grantback.

DATES: We must receive your comments on or before January 20, 2004.

ADDRESSES: All written comments should be addressed to Maurice James, Chief, State Administration Branch, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 4319, MS 7323, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Maurice James. Telephone: (202) 205–8781 or via Internet at: *maurice.james@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Under two settlement agreements between the Department and the MADOE, the Department recovered $3,841,433 from the MADOE in full resolution of claims arising under the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), 20 U.S.C. 2301 *et seq.*, the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.*, and the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1401, 1411–1419. Of the total amount recovered under the two agreements, $2,432,628 resolved Perkins III-related findings cited in Massachusetts' Single Audit Reports covering State fiscal years (FYs) 1997 (ACN: 01–97–88064), 1998 (ACN: 01–98–98009) and 1999 (ACN: 01–99–08038). In its grantback application, the MADOE requests repayment of 75 percent of the $2,432,628 recovered by the Department for Perkins III-related claims.

The Department's claim of $2,432,628 for Perkins III-related findings was contained in a May 25, 2001 program determination letter (PDL) and accompanying Matrix of Closed Findings (Matrix) issued by the Deputy Assistant Secretary for Vocational and Adult Education and other Department officials. The Matrix noted that the MADOE violated the Federal requirements governing matching and time distribution. Specifically, the MADOE failed to match, from non-Federal sources and on a dollar-for-dollar basis, Federal funds reserved for State administration. In addition, the MADOE failed to keep proper time distribution records for salaries and fringe benefits paid with Perkins III funds. These findings were resolved through the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI).

The CAROI process culminated in the two settlement agreements under which the MADOE refunded to the Department a principal amount of $2,432,628 for Perkins III-related claims. The settlement agreements were executed in May 2001. The Department received full payment for these determinations in October 2001.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to any applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State or local educational agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices or procedures of the recipient that resulted in the violation of law have been corrected and the recipient is in all other respects in compliance with the requirements of that program;

(2) The recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) The use of the funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the MADOE has applied for a grantback of $1,824,471, or 75 percent of the $2,432,628 refunded to the Department for Perkins III-related claims under the two settlement agreements, and has submitted a plan for use of the proposed grantback funds, consistent with Perkins III. The MADOE has implemented a system to address the requirement in Perkins III to match administration costs on a dollar-for-dollar basis. The MADOE will not count towards the match any State administrative expenditures for staff that are not 100 percent related to vocational education. The positions funded from Perkins III administrative funds will be supported by monthly time sheets, and their costs will be counted toward the match.

A May 2002 on-site monitoring visit by Department staff confirmed that the MADOE has implemented policies and procedures for the process and reconciliation of salary charges to Federal programs, including the Perkins III account. Adjustments will be made to the Federal accounts in a timely manner, and any excess charges will be the responsibility of the State. The salary adjustment plan that was implemented specified a monthly reporting requirement. There are no plans to alter these procedures. There were no questioned costs in this area based on the FY 2002 audit conducted by the independent public accounting firm of Deloitte and Touche.

D. Consultation in the Development of the Grantback Application

In developing the grantback application, the MADOE states that it solicited input from:

- Secondary and postsecondary educators in the State;
- Workforce training and development organizations;
- Massachusetts Community College Executive Office;
- Massachusetts Association of Vocational Administrators;
- Massachusetts Tech Prep Roundtable;
- Massachusetts Postsecondary Perkins Committee.

According to the MADOE, each constituency group reviewed and supported the identified priorities. The priorities include:

- Improving the transition of career and technical education (CTE) students from high school to college CTE programs;
- Supporting the development and implementation of Statewide secondary to postsecondary ''pathways'' in information technology, health and pre-engineering career fields;
- Increasing the participation and completion of CTE programs that lead to nontraditional training and employment;
- Increasing the pool of highly qualified vocational technical educators through a Web-based licensing and job bank system and an improved pre-service program for new vocational technical educators; and
- Providing support to Perkins-eligible secondary and postsecondary schools and colleges to add new CTE programs for occupations in information technology, health and pre-engineering, or to assist these schools and colleges in attaining national program approval or business and industry standards in these three areas.

The MADOE's grantback application indicates that the Executive Director for the Massachusetts Community College System is especially supportive of the grantback priority that focuses on the improvement of postsecondary CTE student retention and graduation rates. Approximately 50 percent of the proposed grantback activities will support a strengthened partnership between secondary and postsecondary education institutions.

E. Description of the State's Current Activities Under the Applicable Program

The MADOE's CTE unit is directly responsible for administering programs authorized under Perkins III. The unit is also responsible for approving programs under Charter 74 (the State law for CTE) and for providing technical assistance to school districts, community colleges, and other agencies on issues related to the transition from school to careers.

According to the MADOE, over the past three years, the CTE unit has focused its work on addressing the four core indicators in the State's Perkins accountability system. These efforts address:

- Improving academic and technical skill gains for secondary and postsecondary CTE students;
- Increasing the number of CTE students graduating from high school and receiving a two-year associate degree or a one- or two-year certificate;
- Improving the placement of students in technical careers related to their fields of study; and
- Increasing the number of students enrolled in and completing nontraditional programs.

To reach these goals the CTE unit has focused on:

- Supporting whole school restructuring through the State's membership in the *High Schools that Work* initiative. The State network is comprised of 30 high schools, including many of the most challenged schools in the Commonwealth;
- Offering State-sponsored professional development highlighting ''best practices'' that lead to improved student achievement. Perkins III local recipients provide high-quality professional development through the use of a mandated ''15 percent or more set-aside'' of State leadership funds. The State has designed its professional development programs in a manner intended to increase teachers' knowledge of academic and technical subject matter and to support school-wide academic initiatives in such areas as reading, writing and mathematics;
- Providing additional financial resources to school districts' CTE programs through the MADOE's ''Academic Support Grants'' to increase the number of CTE students passing the

Massachusetts Comprehensive Assessment System exam (a requirement for receiving a high school diploma);

- Encouraging and supporting schools and colleges in applying for and receiving national program approval and helping students to earn industry or State-recognized credentials;
- Supporting the development of a career and technical assessment system that would lead to issuing a certificate of occupational proficiency;
- Providing strong tech-prep programs that lead to increased numbers of CTE students successfully transitioning to and completing two-year and four-year postsecondary programs of study; and
- Providing technical assistance and professional development specifically targeted to increasing the number of CTE students enrolling in and completing nontraditional programs.

In its grantback application, the MADOE states that for the past two years, the CTE unit's administration and staff have analyzed the data collected from their work addressing the four core indicators and identified particular areas of need for the focus of the grantback application. In addition, the Perkins program compliance audit, conducted in May 2002 by a team from the Department's Office of Vocational and Adult Education, and subsequent report support the need for the initiatives outlined in the grantback application.

F. Proposed Initiatives

The following is a description of the seven proposed initiatives, as outlined in the MADOE's grantback application:

(1) Successful transition of CTE students from high school to college—competitive grant program.

The MADOE proposes to offer a competitive request for proposal (RFP) to Perkins-eligible secondary and postsecondary institutions to develop collaborative programs that focus on intensive college transition and preparation programs for CTE high school students. This initiative would focus on the academic and technical preparedness needed for a student's success at the postsecondary level. Programs would include academic school year preparedness and transition activities with an intensive summer program for entering college students.

(2) Development and dissemination of Statewide secondary-to-postsecondary pathways in information technology, health and pre-engineering/engineering career fields.

The MADOE's CTE unit proposes to develop specific high school-to-college (four-year high school to one-year, two-year and four-year college) program pathways in health, information technology and engineering. Competencies, course and program sequencing, syllabi, curricula, articulation processes, workplace opportunities and assessment models will be identified in all three career areas. All of the resources produced as part of this initiative will be posted at the CTE unit's Web site for employers, schools and colleges. The CTE unit also will provide professional development opportunities to support Statewide implementation of the pathway models. This initiative will be aligned with and be part of the implementation of the new system to issue Certificates of Occupational Proficiency and the new Massachusetts Vocational-Technical Career 74 Regulations.

(3) Workplace models in high-wage, high-demand career and technical education pathways—competitive grant program.

The MADOE proposes to issue a competitive RFP to Perkins-eligible school districts and colleges to develop and provide workplace models in health, information technology and engineering program pathways. Program models must include intensive workplace projects, employer mentoring, academic and technical skill competency attainment related to course content, collaborative project development that includes industry employees and high school and college staff, and assessment of both product outcomes for industry and academic and technical skill gain by students.

(4) Increased participation in and completion of technical education programs that lead to nontraditional training and employment.

The MADOE is proposing a two-pronged study to alter current career and technical education enrollment patterns. A contractor will be selected through a competitive ''request for response'' (RFR) process to study the current nontraditional enrollment patterns in secondary career and technical education programs. The study will examine the underlying factors for selecting a career major and take into consideration any recent research done in the field. The study will also include actions that the MADOE and school districts can take to help alter current secondary career and technical education enrollment patterns.

(5) Web-based Perkins accountability system.

The MADOE proposes to develop a Web-based application for licensing vocational technical educators. This will be an enhancement to the State's current ''Educator Licensure and Recruitment'' system, known as ELAR. The system will allow applicants to request waivers, search jobs and post resumes, and make fee payments online. It will be linked to the State's educator preparation education programs and its vocational educator testing center. The new system will include an on-line faculty register that will be used by MADOE staff to ensure that all current vocational technical education teachers employed by school districts and collaboratives have the appropriate credentials.

(6) High-wage, high-demand career and technical education—competitive grant program.

The MADOE will issue a competitive RFP for Perkins-eligible secondary and postsecondary institutions with career and technical programs. Grantees will use funds either to begin a new CTE program in high-wage, high-demand fields within the three cluster areas or to update existing programs in those clusters to align with national program standards or industry-recognized certifications. The MADOE believes that there is an inadequate number of technically skilled workers to fill the jobs being created in technology-driven services. As a result of rapid growth in this sector, demand for professional and technical workers, including in fields requiring less than a four-year degree for entry-level positions, is expected to expand the fastest and generate the most new jobs in the State. It is also expected that engineering and architectural services will grow by 13 percent and generate 4,300 new jobs. Of the 25 fastest growing occupations in the State, more than half are related to information technology and health care.

(7) Vocational technical education teachers' pre-service training.

The Massachusetts Board of Education recently approved a new set of vocational technical education regulations that became effective on September 1, 2003. The teacher credentialing portion of the regulations contains a new provision that requires vocational technical education teacher candidates to earn 21 college degree credits in professional education courses. These courses include a three credit college degree seminar specifically designed for new teachers. New teachers will be required to take these courses in their first year of teaching. As part of the State's effort to prepare first-year vocational technical education teachers better, a ''new teachers tool kit'' will be developed in consultation with the State's three vocational technical educator preparation programs. The tool kit will

be based upon the professional standards for vocational technical education teachers contained in the regulations. Topics covered in the tool kit may include, but are not limited to, student grading, assigning and reviewing homework, classroom management, lesson planning, developing a course syllabus and project-based learning, and pertinent State and Federal laws and regulations.

G. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the MADOE and other relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or other investigations.

H. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an agreement to award funds under a grantback arrangement, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the MADOE under a grantback agreement. The grantback award would be in the amount of $1,824,471, which is 75 percent—the maximum percentage authorized by GEPA—of the principal recovered by the Department as a result of the final audit determinations and resolution of the Perkins III-related claims.

I. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The MADOE has agreed to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The MADOE will expend the funds awarded under the grantback in accordance with —

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted and any amendments to the plan that are approved in advance by the Secretary; and

(2) All funds received under this grantback arrangement must be obligated by September 30, 2004, in accordance with section 459(c) of GEPA and the MADOE's plan;

(3) The MADOE will, no later than 90 calendar days after the expiration date of the approved grantback award, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been expended in accordance with the proposed plan, and

(b) Describes the results and effectiveness of the projects for which the funds were spent; and

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: December 11, 2003.

Richard T. LaPointe,

Deputy Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–31010 Filed 12–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–35–000, et al.]

Madison Gas and Electric Company, et al.; Electric Rate and Corporate Filings

December 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1.Madison Gas and Electric Company; MGE Energy, Inc.; MGE Power LLC; MGE Power West Campus LLC

[Docket Nos. EC04–35–000 and EL04–32–000]

Take notice that on December 5, 2003, Madison Gas and Electric Company, MGE Energy, Inc., MGE Power LLC and MGE Power West Campus filed an Application for Approval of the Disposition of Jurisdictional Facilities under section 203 of the Federal Power Act, 16 U.S.C. 824b (2000), and Petition for Declaratory Order. MGE Power West Campus, a non-utility subsidiary of MGE Energy and MGE Power, states that it will develop, construct and own generating assets and associated interconnection facilities and lease those facilities under a long-term lease to its corporate affiliate, MGE.

Comment Date: December 29, 2003.

2.Duquesne Power, L.P.

[Docket No. EG04–21–000]

Take notice that on December 8, 2003, Duquesne Power, L.P., (applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The applicant is a limited partnership that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant states that it proposes to own and operate an approximately 436 megawatt four-unit coal-fired generating station located in Shamokin Dam, Pennsylvania. The applicant states that it is seeking a determination of its exempt wholesale generator status and all electric energy sold by the applicant will be sold exclusively at wholesale.

Comment Date: December 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the

extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00589 Filed 12–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

December 12, 2003.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Tuesday, December 16, 2003 and if necessary, 9 a.m. on Wednesday, December 17, 2003 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Michael Cotleur (202) 502–8519 *michael.cotleur@ferc.gov*, William Collins (202) 502–8248 *william.collins@ferc.gov*, or Kevin Frank (202) 502–8065 *kevin.frank@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00590 Filed 12–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

December 12, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 2232–407	11–28–03	Hon. John Edwards.
2. Docket No. CP02–90–000	12–2–03	James Martin.
3. Docket No. CP02–78–000	12–2–03	Linda Kokemuller, *et al.*
4. Project No. 2030–000	12–4–03	Peter Lickwar.
5. Project No. 2086–000	12–12–03	Dr. Knox Mellon.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00591 Filed 12–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Public Utility District No. 2 of Grant Project No. P–2114–116; County Washington; Errata Notice

December 12, 2003.

On November 3, 2003, the Commission issued a ''Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments'' in the above-referenced proceeding.

Item ''1.'' of the referenced Notice read ''Deadline for filing additional study requests and requests for agency cooperating status: December 22, 2003.'' The date should have been: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00592 Filed 12–17–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–8]

Notice of Request for Initial Proposals (IPs) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting Initial Proposals (IPs) from States, Tribes, local governments, universities, non-profits, and other eligible entities, as shown below in the section called Eligible Applicants, interested in applying for Federal assistance for Water Quality Cooperative Agreements (CFDA 66.463) under the Clean Water Act (CWA) section 104(b)(3). EPA Headquarters intends to award an estimated $3.5 million to eligible applicants through assistance agreements ranging in size from $10,000 up to $500,000 for Water Quality Cooperative Agreements, which are for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. From the IPs received, EPA estimates that 30 to 35 projects may be selected to submit full applications.

The Agency intends to make available at least $200,000 per year of the annual appropriation for Water Quality Cooperative Agreements, from FY 2004 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies. The Agency has made available $600,000 from FY 2001 through FY 2003. It is expected that the $200,000 available for cooling water intake projects in FY 2004 will be used to fund a project approved in a prior year.

The Agency reserves the right to reject all IPs and make no awards.

DATES: EPA will consider all IPs received on or before 5 p.m. Eastern Time, February 17, 2004. IPs received after the due date, may be reviewed at EPA's discretion.

ADDRESSES: It is preferred that IPs be electronically mailed (E-mailed) to *WQCA2004@EPA.GOV.* If mailed through the postal service or other means, three copies should be sent to: Barry Benroth, 4204M, WQCA2004 U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The following address must be used for delivery of the copies by an overnight delivery or courier service: Barry Benroth, 4204M, WQCA2004, Phone 202–564–0672, U.S. Environmental Protection Agency, Room 7324 J, EPA East, 1201 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Barry Benroth by telephone at 202–564–0672 or by E-mail at *benroth.barry@epa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of This Request Is for Initial Proposals

The Office of Wastewater Management, Office of Water at EPA Headquarters is requesting IPs from States, Tribes, local governments, non-profit organizations and other eligible entities under the Clean Water Act Section 104(b)(3) for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

An organization whose IP is selected for possible Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, *see* 40 CFR 30.12 and 31.10).

Organizations who have an existing agreement under this program are eligible to compete with proposals for new awards.

The Office of Wastewater Management, Office of Water, EPA Headquarters Has Identified the Following High Priority Areas for Consideration

Assistance agreements awarded under Section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, ''demonstrations'' are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished through the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

The Office of Wastewater Management at EPA Headquarters has identified several subject areas for priority consideration. EPA will award Assistance Agreements for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution in the subject areas shown below in bold. Example projects are shown for each area.

Water and Wastewater Infrastructure

Benefits assessment of wastewater infrastructure investments including funding from the Clean Water State Revolving Fund program.

Tools, techniques, benchmarking, or training for more efficient wastewater and other systems performance.

Capacity development for Tribes, Native Villages, and small communities to effectively operate and maintain water and wastewater treatment facilities.

Innovative water efficiency programs or techniques to reduce infrastructure costs or municipal water use.

Demonstration of remote techniques for assessing the performance and environmental impacts of on-site/decentralized wastewater systems.

Innovative approaches or methods to reduce risk or impact of terrorist or other attacks to integrity and effectiveness of wastewater collections and treatment.

Impacts of Wet Weather Flows

Test results achieved by peak excess flow technologies in collection systems at CSO outfalls and at treatment plants, and test performance of devices before and after blending. Testing may include pollutants in effluent or ambient settings.

Measure, or develop tools to determine the effectiveness of storm water BMPs.

Develop and pilot storm water discharge and ambient water monitoring techniques for gauging water quality improvements.

Develop and pilot sample performance measures for use by small Municipal Separate Storm Sewer Systems (MS4s) to incorporate into storm water management plans.

Outreach on low impact development (LID) and its potential uses.

Provide tools to help permitees select options and overcome barriers in storm water pollution prevention plan development.

Pathogens

Conduct studies on monitoring pathogens in wastewater and biosolids, including bacterial, viruses and parasites.

Conduct studies on treatability of pathogens in wastewater.

Characterization of impacts of PH levels on municipal infrastructure systems (pretreatment discharges to POTWs).

National Pollutant Discharge Elimination System (NPDES) Program Strategies To Implement Watershed-based Efforts

Conduct a demonstration project that provides support to facilitate watershed-based permitting and trading.

Develop and pilot innovative techniques to facilitate NPDES program management for enhanced results, integrity and/or efficiency.

Animal Feeding Operations

Develop and demonstrate innovative or alternative technologies for CAFOs to treat/process wastewater or manage manure.

CAFO producer outreach programs to train/educate the industry on implementation of the CAFO rule.

EPA may also consider other project areas for funding to the extent authorized by CWA section 104(b)(3) and to the extent funds are available for such project areas.

Statutory Authority, Applicable Regulations, and Funding Level

Water Quality Cooperative Agreements are awarded under the authority of section 104(b)(3) of the Clean Water Act (33 U.S.C. 1254(b)(3)).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR part 30 (for institutions of higher learning, hospitals, and other non-profit organizations) and 40 CFR part 31 and 40 CFR part 35, subparts A and B (for States, Tribes, local governments, intertribal consortia, and interstate agencies).

Applicants requested to submit a full application (SF–424) will be required to comply with Intergovernmental Review requirements (40 CFR part 29).

Applicants must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number with the full application. Organizations may obtain the number by calling, toll free, 1–866–705–5711.

Total funding available for award by Headquarters will depend on EPA's appropriation for Fiscal Year 2004; however, it is estimated that $3.5 million will be available for funding approved projects. The average size of an award is anticipated to be approximately $100,000.

Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land, are not eligible for funding under this program. New or on-going programs to implement environmental controls are not eligible for funding under this program.

Request for Initial Proposal Format and Contents

IPs should be limited to four pages. Full application packages should not be submitted at this time. It is recommended that confidential information not be included in the IP. The following format should be used for all IPs:

Name of Project:

Point of Contact: (Individual and Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the number and status of the current grant or cooperative agreement):

Proposed Award Amount:

Proposed Awardee Cost Share: (Cost sharing is not required)

Description of General Budget Proposed To Support Project:

Project Area: (based on areas of interest shown above)

Project Description: (Should not exceed three pages of single-spaced text)

Expected Accomplishments or Product, With Dates, Environmental Results and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA IP Evaluation Criteria

EPA will award Water Quality Cooperative Agreements on a competitive basis and evaluate IPs based on the following criteria (maximum points for each element are shown).

- The relationship of the proposed project to the priorities identified in this notice. (5)
- How well the project proposes to address a nationally important need, issue, or interest. (30)
- Communication plan to transfer results of the project to other potentially interested parties. (25)
- How well the project furthers the goal of the Clean Water Act to prevent, reduce, and eliminate water pollution. (20)
- Leverage of other resources (*e.g.,* cost share, participation by other organizations) as part of the proposed approach. (10)
- Cost effectiveness and reasonableness of the proposal. (10)

The IPs will be evaluated by EPA staff on the elements shown above. Maximum points equals 100. EPA may consider IPs even if all criteria are not fully met, provided the proposed projects meet the applicable statutory and regulatory requirements and funds

are available for such projects. IPs which are not in compliance with the notice, *i.e.*, do not provide the required information, are submitted by ineligible applicants, are considered to be primarily construction projects, or are for the acquisition of land will not be considered.

IP Selection

Final selection of IPs will be made by the Director, Office of Wastewater Management. Selected organizations will be notified and requested to submit a full application. It is expected that unsuccessful applicants will be notified by e-mail.

Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the Clean Water Act are State water pollution control agencies, Tribal governments, intertribal consortia, interstate agencies, and other public or non-profit private agencies, institutions, organizations and individuals.

Application Procedure

Electronic transmittal of IPs is preferred to facilitate the review process. Hard copies are acceptable. Please send three copies of the IPs if it is not electronically transmitted.

Dispute Resolution Process

Procedures at 40 CFR 30.63 and 40 CFR 31.70 apply.

Type of Assistance

It is expected that all the awards under this program will be cooperative agreements. States, interstate agencies, federally recognized tribes, and intertribal consortia meeting the requirements at 40 CFR 35.504 may include the funds for Water Quality Cooperative Agreements in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs at 40 CFR part 35, subparts A and B. For states and interstate agencies that choose to do so, the regulations provide that the work plan commitments that would have been included in the WQCA must be included in the PPG work plan. A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

Schedule of Activities

This is the estimated schedule of activities for submission, review of proposals and notification of selections:

February 17, 2004—RFIPs due to EPA.

March 29, 2004—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package. Schedule may be modified based on the level of response.

A list of selected projects will be posted on the Office of Wastewater Management Web site *http://www.epa.gov/owm/wqca/2004.htm.* This web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this web site and not in the **Federal Register**.

Dated: December 11, 2003.

Jane S. Moore,

Deputy Director, Office of Wastewater Management.

[FR Doc. 03–31236 Filed 12–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 10, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 17, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1046.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Report and Order.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,023 respondents; 7,140 responses.

Estimated Time Per Response: 100 hours.

Frequency of Response: Quarterly reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 714,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission issued a Report and Order in CC Docket No. 96–128, FCC 03–235, in which final rules were adopted that altered the previous payphone compensation rules. The new rules place the liability to compensate payphone service providers (PSPs) for payphone-originated calls on the facilities-based long distance carriers from whose switches such calls are completed. The new rules were not put in effect immediately to allow industry time to prepare for implementation of the new rules. Accordingly, the Order adopted interim rules initially adopted in the Second Order on Reconsideration until the new rules outlined in CC Docket No. 96–128 become effective. The interim rules received OMB approval on 11/14/03 and are currently in effect. The Commission is now seeking OMB approval of the final rules. The interim rules will be vacated and the new rules will go into effect on the first day of the next full quarter following the date of OMB approval.

OMB Control No.: 3060–0894.

Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 52.

Estimated Time Per Response: 3–5 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 162 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254(e). In an Order on Remand, the Commission modifies the high-cost universal service support mechanism for non-rural carriers and adopts measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31155 Filed 12–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–3178]

Freeze on High Power Use of the 460–470 MHz Band Extended

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission (FCC) announces that its freeze on the filing of applications for high power operations on 12.5 kHz offset channels in the private land mobile radio 460–470 MHz band, which had been originally set to expire October 16, 2003, will instead be extended. In June 2000, the FCC established the Wireless Medical Telemetry Service (WMTS), and allotted a total of 13.5 megahertz of spectrum on a primary basis in three blocks (608–614 MHz, 395–1400 MHz, and 1427–1429.5). To prevent potential interference to medical telemetry operations the FCC froze applications for high power use of offset channels in the 460–470 MHz band on October 16, 2000 for a period not to exceed three years. Thus, the freeze was set to expire on October 16, 2003. The purpose of the three year freeze was to give hospitals sufficient time to migrate their medical telemetry operations from the 460–470 MHz band to the new WMTS bands.

DATES: For up to 180 days after October 16, 2003, the freeze on the filing of applications for high power operations on 12.5 kHz offset channels in the private land mobile radio 460–470 MHz band, will continue in the ''freeze'' status.

FOR FURTHER INFORMATION CONTACT: John Kuzma, P.E., *john.kuzma@fcc.gov*, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–7479, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of FCC Public Notice, DA 03–3178, released October 15, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov/wtb*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On September 23, 2003, the American Hospital Association (AHA) reported that, based on its recent, informal polling of hospitals, there has been virtually no migration of medical telemetry systems to the WMTS frequencies. AHA notes that high power use in the 460–470 MHz band has the potential to interfere with existing medical telemetry systems that have not moved to the WMTS frequencies and has proposed a thirty-month plan for the transition of medical telemetry equipment into the WMTS frequencies.

2. The decision to extend the freeze is procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for not using notice and comment procedures in this case, or making the freeze extension effective 30 days after publication in the **Federal Register**. The FCC finds that such procedures would be impractical, unnecessary and contrary to the public interest as our compliance would undermine the public policy rationale of the freeze in the first place. The decision to impose a temporary extension of the freeze is not intended to reflect on the ultimate resolution of the use of this band, but is intended to maintain the FCC's regulatory options in the band pending the resolution of such issues described herein and to the continue to protect against harmful interference to medical telemetry operations pending such resolutions. This action is authorized under sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Ramona Melson,

Deputy Chief, Public Safety and Private Wireless Division.

[FR Doc. 03–31217 Filed 12–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Application for Consent to Exercise Trust Powers.

Form Number: 6200/09.

OMB Number: 3064–0025.

Annual Burden:

Estimated annual number of respondents: 18.

Estimated time per response: 14 applications—8 hours; 4 applications—24 hours.

Total annual burden hours: 208 hours.

Expiration Date of OMB Clearance: January 31, 2004.

SUPPLEMENTARY INFORMATION: Insured State nonmember banks submit applications to FDIC for consent to exercise trust powers. Applications are evaluated by FDIC to verify qualifications of bank management to administer a trust department and to ensure that bank's financial condition will not be jeopardized as a result of trust operations.

2. *Type of Review:* Renewal of a Currently Approved Collection.

Title: Appraisal Standards.

OMB Number: 3064–0103.

Annual Burden:

Estimated annual number of respondents: 5,346.

Estimated number of responses: 328,600.

Estimated time per response: 15 minutes.

Average annual burden hours: 82,150 hours.

Expiration Date of OMB Clearance: February 29, 2004.

SUPPLEMENTARY INFORMATION: FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

DATES: Comments on these collections of information are welcome and should be submitted on or before January 20, 2004, to both the OMB reviewer and the FDIC contact listed below.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed below.

• *Mail:* Leneta G. Gregorie, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Joseph F. Lackey, Jr., Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: December 10, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E3–00555 Filed 12–17–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Herman Eugene Ratchford, Triangle Real Estate of Gastonia, Inc., Herman Eugene Ratchford, Jr., and James Henry Ratchford, all of Gastonia, North Carolina, as a group acting in concert to acquire voting shares of First South Bancorp, Inc., Spartanburg, South Carolina, and thereby indirectly acquire voting shares of First South Bank, Spartanburg, South Carolina.

Board of Governors of the Federal Reserve System, December 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00587 Filed 12–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Manulife Financial Corporation, Toronto, Canada; to become a bank holding company by acquiring 100 percent of the voting shares of John Hancock Financial Services, Inc., Boston, Massachusetts, and thereby indirectly acquire First Signature Bank and Trust Company, Portsmouth, New Hampshire.

In connection with this application, John Hancock Financial Services, Inc., Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First Signature Bank and Trust Company, Portsmouth, New Hampshire.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Community Capital Corporation, Greenwood, South Carolina; to merge with Abbeville Capital Corporation, Abbeville, South Carolina, and thereby indirectly acquire The Bank of Abbeville, Abbeville, South Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Home Bancshares, Inc., Conway, Arkansas; to retain 32.25 percent of the voting shares of TCBancorp, Inc., North Little Rock, Arkansas, and thereby indirectly retain voting shares of Twin City Bank, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, December 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00586 Filed 12–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of October 28, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open

Market Committee at its meeting held on October 28, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, December 12, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. E3–00588 Field 12–17–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Statements of Organizations, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS) of the Statement of Organization, Functions, and Delegation of Authority for the Department of Health and Human Services (HHS), chapter AC, Office of Public Health and Science (OPHS), as last amended at 67 FR 71568, dated December 2, 2002, is being amended to reflect the realignment of personnel oversight, administration, and management functions for the U.S. Public Health Service (PHS) Commissioned Corps in the OPHS. Specifically, it realigns these functions in a newly established Office of Commissioned Corps Force Management (ACQ) and in the Office of the Surgeon General (ACM). The changes are as follows:

I. *Under Part A, Chapter AC, Office of Public Health and Science, make the following changes:*

A. Under Paragraph AC.10 Organization, insert the following line at the end of the listing:

N. Office of Commissioned Corps Force Management (ACQ)

B. Under Paragraph AC.20, Functions, make the following changes:

1. Delete Paragraph, ''K. Office of the Surgeon General (ACM),'' in its entirety and replace with the following:

K. Office of the Surgeon General (ACM)

Section ACM.00 Mission—The Office of the Surgeon General (OSG) is headed by the SG who reports to the Assistant Secretary for Health (ASH), provides staff support for: (1) Activities relating to membership on the Board of Regents of the Uniformed Services University of the Health Sciences and as principal health official for PHS on matters related to policies affecting PHS faculty and students (10 U.S.C. 2113(a)(3)); (2) activities related to responsibilities on other boards are assigned, including the (a) National Library of Medicine; (b) Armed Forces Institute of Pathology (AFIP); (c) American Medical Association (AMA) House of Delegates; and (d) Executive Committee, Association of Military Surgeons of the United States. The Office provides support to the SG; (3) in issuing warnings to the public on identified health hazards; (4) for review of the particulars of Department of Defense (DoD) plans for transportation, open testing and disposal of lethal chemicals and biological agents and in recommending precautions necessary to protect the public health and safety binding on the Secretary, DoD, which can only be overridden by the President (50 U.S.C. 1512 (2) & (3)); (5) communicating with professional societies to receive, solicit, and channel concerns regarding health policy in behalf of the ASH; (6) maintaining liaison with the Surgeons General of the Armed Forces and the Department of Veterans Affairs; (7) representing PHS at national and international health and professional meetings to interpret PHS philosophy, policies, organizational responsibilities and programs, as assigned; (8) providing management and oversight for the community-based, civilian Medical Reserve Corps program; (9) providing liaison with governmental and non-governmental organizations on matters pertaining to military and veterans affairs; and, (10) assuring day-to-day management of the Corps' operations, force readiness, and field command of deployments of the Commissioned Corps.

Section ACM.10 Organization: includes the following components:

- Immediate Office of the Surgeon General (ACM)
- Office of Science and Communications (ACM1)
- Office of Commissioned Corps Operations (ACM2)
- Office of Force Readiness and Deployment (ACM3)
- Office of Reserve Affairs (ACM4)

Section ACM.20 Functions:

(a) Immediate Office of the Surgeon General (ACM): (1) Advises the ASH on matters relating to protecting and advancing the public health of the Nation; (2) manages special deployments that address Presidential and Secretarial initiatives directed toward resolving critical public health problems; (3) as requested, serves as a spokesperson on behalf of the Secretary and the ASH, addressing the quality of public health practice on the Nation; (4) provides supervision of activities relating to the day-to-day management of operations and deployment of officers of the Commissioned Corps; (5) provides advice to the ASH, collaborating with the Office of Commissioned Corps Management (OCCFM), on the policies and implementation related to the appointment, promotion, assimilation, recognition, professional development, and other matters required for the efficient management of the Corps; (6) provides liaison with governmental and non-governmental organizations on matters pertaining to military and veterans affairs; (7) directs and oversees internal office administrative operations (including proposing and executing office budgets); and (8) convenes periodic meetings of the flag officers to obtain senior level advice concerning the day-to-day management of Corps' operations.

(b) Office of Science and Communications (ACM1): (1) Coordinates activities to plan, develop, introduce, and evaluate Surgeon General's Reports, Calls-to-Action, workshops, and other authoritative statements; (2) advises the SG on science, data, and evidence pertaining to population-based public health and the furtherance of public health priorities; (3) represents the SG in efforts to coordinate federal public health activities with similar activities in the States and local areas; (4) coordinates and is responsible for the preparation of SG correspondence, speeches, and communications; (5) represents the SG at conferences, symposia, and community events; and (6) coordinates the receipt of senior level advice from the Chief Professional Officers, the Surgeon General's Professional Advisory Council, and categorical Professional Advisory Committees.

(c) Office of Commissioned Corps Operations (ACM2):

Section ACM2.00 Mission: (1) Provides advice to the SG on matters related to the day-to-day management of Commissioned Corps operations,

[1] Copies of the Minutes of the Federal Open Market Committee meeting on October 28, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

including active duty and reserve components; (2) implements the policies established by the ASH for the operations of the PHS Commissioned Corps; (3) provides for the delivery of training and for career development, and applies professional credentialing requirements for the Corps; (4) manages systems required for selecting personnel for appointment, promotion, assimilation, and award recognition, for evaluating officer performance, and for processes required for disability retirement, disciplinary, and other-than-honorable discharge purposes; (5) implements officer and force accession plans through a staff of recruiters, including an Associate Recruiters Program; (6) manages personnel administration systems for the permanent or temporary assignment, deployment, and detail of Corps members; (7) implements policies established by the ASH for commissioned and warrant officers on active duty, Commissioned Officer Student Training Extern Program (COSTEP), reserve officers, retired officers, and survivors of deceased officers; (8) prepares all personnel orders for approval and signature by the ASH; (9) makes recommendations to the SG on individual details for review and action by the ASH; (10) reviews and makes recommendations on proposed blanket personnel agreements negotiated by the ASH; (11) reviews and makes recommendations on the temporary deployments of officers not specifically under an assignment to another Operating or Staff Division of the Department or another Department or agency covered by a memorandum of agreement or blanket detail agreement; (12) provides technical review and recommendations to the SG on appeals of adverse actions that would result in the termination of officers' commissions and on formal Equal Employment Opportunity complaints; (13) maintains liaison with the OCCFM, and, as directed, with Departmental Operating and Staff Divisions and, as directed, with non-departmental entities to which officers are assigned under blanket agreements; and (14) works with OCCFM and agencies to identify career development assignments, and to identify officers to be recommended for directed reassignments where appropriate.

Section ACM2.10 Organization. The Office of Commissioned Corps Operations is headed by a Director, who reports to the SG, and includes the following components:

- Immediate Office of the Director (ACM2)
- Division of Commissioned Corps Recruitment (ACM21)
- Division of Commissioned Corps Assignment (ACM22)
- Division of Commissioned Corps Training and Career Development (ACM23)
- Division of Commissioned Corps Officer Support (ACM24)

Section ACM2 2.0 Functions

(1) Immediate Office of the Director (ACM2): (1) Advises the SG on all matters related to the operations management of the PHS Commissioned Corps; (2) provides for the day-to-day management of Commissioned Corps operations, implements policies received from the ASH for personnel, training, readiness, assignment, deployment, promotion, and retirement for all officers; (3) collaborates with OCCFM on the development and implementation of Commissioned Corps policies; (4) coordinates the application of information technology and support for the execution of OSG activities; (5) manages the process for adverse action decisions and other-than-honorable discharges; and (6) is responsible for the appropriate exercise of delegated authorities and responsibilities.

(2) Division of Commissioned Corps Recruitment (ACM21): (1) Implements approved programs to assure awareness of the Corps and its career opportunities among health professional schools and associations, provider institutions, and the public; (2) in accordance with policies, goals, and strategies established by the ASH, carries out programs and activities designed to attract new health personnel to the Corps, to attract officers already in the Corps to designated assignments, and to promote the Corps and service in it; (3) manages an Associate Recruiter Program and otherwise mobilizes recruitment activity among the active duty, reserve, and retired officers; (4) assists OCCFM in promoting the effective and efficient utilization of the Corps within all venues where the Corps is utilized; and (5) carries out approved recruitment programs specifically for reserve components and other Corps personnel asset programs.

(3) Division of Commissioned Corps Assignments (ACM22): (1) Addresses and meets the short-term and long-term placement requirements for active-duty and reserve component personnel established by the ASH and developed by OCCFM, including the Commissioned Corps and the warrant Corps, by category; (2) works with OCCFM to identify and categorize the types of assignments for which Corps members and its reserve personnel assets may be required; (3) implements a billet management system utilizing standards developed by OCCFM, and approved by the ASH; (4) evaluates and grades billets to which officers are to be assigned in accordance with standards established by OCCFM; (5) assures that assignments of officers and the billets to which assigned are consistent and appropriately categorized and identified; (6) reviews all proposed officer personnel actions and prepares orders for signature by the ASH; (7) implements, manages, and monitors approved blanket personnel agreements and individual details; (8) reviews and recommends to the ASH the temporary deployment of all officers not specifically under an assignment to another operating or staff division of the Department or another department or agency; and (9) administers a system to monitor assignments.

(4) Division of Commissioned Corps Training and Career Development (ACM23): (1) Identifies and manages training resources required for establishing and maintaining the readiness and proficiency of the members of the Corps; (2) operates Commissioned Officer education and training systems, providing basic, mid-career, and specialized training programs; (3) monitors officer compliance with credentialing standards; (4) implements career development programs and provides individual career counseling; (5) coordinates COSTEP; (6) administers training programs; and (7) assists officers with retirement planning.

(5) Division of Commissioned Corps Officer Support (ACM24): (1) Coordinates the assignment of members of boards convened for the purpose of recommending appointments, promotions, assimilation actions, approval of award nominations, disability retirements, and other boards that may be required to support operations; (2) supports the boards convened by OSG; (3) administers a system for assuring credentialing, licensing, and other regulatory compliance, and for the periodic evaluation of the individual members of the Corps, including Corps reserve personnel assets; (4) reviews all personnel evaluations to assure that Corps standards are being maintained; and (5) maintains the official personnel records of the Corps.

(d) Office of Force Readiness and Deployment (ACM3): (1) Administers readiness activities to include (a) advice to the ASH and OCCFM on strategic and long term readiness planning, (b) assurance of the accuracy and maintenance of an adequate roster of the readiness status of officers, (c)

development and maintenance of systems for the tracking, mission critical training, mobilization, and deployment of commissioned officers; (d) supervision of a teaching staff charged with officer instruction using plans, strategies, and materials, consistent with policy developed by the ASH, necessary for officers to fulfill readiness and deployment standards; and (e) coordination of logistics for after-action requirements about deployments; (2) administers and oversees mobile medical teams and other special operations team activities and supports the OASPHEP with resources as required for emergency operations at headquarters and in the field; (3) provides day-to-day management and oversight of the USA Freedom Corps Medical Reserve Corps (MRC) program by: (a) Managing the MRC grant program and (b) providing technical assistance to MRC communities on a variety of community and outreach issues; (4) maintains liaison with the OSPHEP and other Federal entities as appropriate; and (5) manages and supervises temporary deployments of all officers not specifically under an assignment to another Operating or Staff Division of the Department or another Department or agency.

(e) Office of Reserve Affairs (ACM4): (1) Develops and maintains reserve components or assets, except for extended active duty reserve officers, in accordance with established plans; (2) serves as the SG's principal advisor on activities related to the preparedness and activation of the Corps reserve personnel assets; (3) in conjunction with the OCCFM conducts strategic and long-term planning for Corps reserve personnel assets; and (4) coordinates the assignments of Corps reserve personnel assets, to support the missions of HHS as well as those of the DoD, the U.S. Coast Guard, the National Oceanographic and Atmospheric Administration, the Department of Justice, and other federal, state, and local agencies.

2. At the end of Section AC.20 Functions, insert the following new component:

N. Office of Commissioned Corps Force Management (ACQ)

Section ACQ.00 Mission. The Office of Commissioned Corps Force Management (OCCFM), under the direction of a Director who reports to the ASH, (1) Develops policies and proposes regulations in order to carry out a comprehensive force management program for the Commissioned Corps; (2) convenes and manages policy and planning related boards and committees; (3) develops workforce and officer standards, conducts workforce planning for all components of the Commissioned Corps and evaluates workforce effectiveness; (4) maintains the Commissioned Corps Personnel Manual (CCPM); (5) in coordination with OPHS budget staff, prepares and executes the Commissioned Corps Personnel Services budget as established through the Service and Supply Fund Board and provides liaison with that Board; (6) serves as the Secretariat for the Public Health Service Commissioned Corps Council; (7) convenes periodic meetings of the flag officers, on behalf of the Secretary and chaired by the ASH, to obtain senior level policy advise; (8) develops policies and programs for the recruitment, appointment, promotion, assimilation, training, and evaluation of all commissioned and warrant officers of the Commissioned Corps; (9) establishes time lines, performance standards, and measurements for the evaluation of the operations and management of the Commissioned Corps; (10) works closely with the OSG to facilitate operations and implementation of policies and programs; and (11) oversees the Beneficiary Medical Program, systems for the compensation of members of the Corps, and the programs for survivor assistance, medical affairs, and any other function that may be conducted in behalf of the ASH under a contract or memorandum of agreement, or performed within any other component of the department.

Section ACQ.10 Organization. The Office of Commissioned Corps Force Management is headed by a Director, who reports to the ASH, and includes the following components:

- Immediate Office of the Director (ACQ)
- Recruitment, Marketing, and Information Systems Division (ACQ1)
- Workforce Policy and Plans Division (ACQ2)
- Program Evaluation and Oversight Division (ACQ3)

Section ACQ.20 Functions:

(a) Immediate Office of the Director (ACQ): (1) Advises the ASH on all matters related to the development of policies affecting all officers, whether active-duty, reserve, or retired; (2) convenes and manages policy and planning related boards and committees; (3) directs the development of issuances and maintenance of the Commissioned Corps Personnel Manual, including all policies and regulations requiring approval of the ASH or the Secretary; (4) develops and executes the budget for the operation of OCCFM, including contracted or subsidiary services; (5) reviews the Commissioned Corps Personnel Services budget as established through the Service and Supply Fund Board and provides liaison with that Board; (6) oversees the policy development and implementation for the activities carried out by the Program Support Center (PSC) and/or other contractors for the implementation of Corps-related services; (7) assures the availability of information technology and support for the execution of Commissioned Corps personnel activities for OCCFM and OSG; (8) works with external federal and non-federal organizations to develop memorandums of agreement and contracts as required for the effective management and oversight of the Corps, including the proper assignment of contracted duties and evaluation of contractor performance; and (9) collaborates with other elements of the Department as appropriate to acquire legal opinions and services as needed, and coordinates legislative activities.

(b) Recruitment, Marketing, and Information Systems Division (ACQ1): (1) Develops recruitment strategies, programs, materials, and other resources directed toward attracting health professional audiences who are potential candidates to apply for and to become officers serving in the active duty and reserve components of the Commissioned Corps; (2) plans and prepares a public affairs program designed to raise awareness of members of the public, the press, and other external constituencies, to promote interest in the activities of the Commissioned Corps; (3) develops and oversees information technology and systems to support recruitment, personnel and Corps management functions and collaborates with the OSG on their implementation, usage, and improvement; (4) provides daily liaison with agencies and their respective human resource functions to promote the effective and efficient use of officers and to incorporate agency-specific marketing information into recruiting programs.

(c) Force Policy and Plans Division (ACQ2): (1) Conducts a program of comprehensive force planning including a billet evaluation and management system, including working with agencies to determine requirements for commissioned corps staffing by professional category, and developing short and long-term manpower projections to assist in directing recruitment; (2) develops issuances for, and maintains, the CCPM, as well as regulations required for the management of the Commissioned Corps; (3)

develops a broad range of personnel standards, including commissioning, professional, and officer competency standards; (4) develops training and education policy and career development guidelines and materials; (5) develops and maintains policies for billet description, grading, and classification that reflect both commissioned corps and agency requirements; (6) advises the ASH on policy pertaining to deployments, and on mission nature, size, duration and mix and blend of the use of active duty and reserve officers for deployments; (7) conducts force planning for all elements of reserve assets, and recommends policy to support plans, goals, and objectives; (8) develops policy, guidelines, and standard memoranda of agreement for individual and blanket details; and (9) works with the Program Evaluation and Oversight Division and other uniformed services to identify and adapt best practices to improve efficiency and effectiveness, and for the purpose of developing systems to provide the highest quality services to the agencies and to the commissioned officer community.

(d) Program Evaluation and Oversight Division (ACQ3): (1) Develops and implements evaluations and assessments of the Commissioned Corps in meeting its goals, objectives and milestones; (2) manages relationships with the PSC and all contractors; (3) assures that programs contain appropriately time framed goals, objectives, and outcomes by which to monitor and assess progress and performance; (4) conducts after action assessments and evaluations pertaining to the use of the Commissioned Corps for deployments, special assignments, or other non-routine uses of officers; (5) oversees and evaluates the medical benefit and payroll programs; (6) conducts periodic program reviews of all aspects of the management and utilization of the Commissioned Corps; and (7) develops methods and approaches to monitor satisfaction and follow up concerning services provided to various customers, and provides feedback to program officials.

II. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Commissioned Corps of the PHS heretofore issued and in effect prior to this reorganization are continue in full force and effect.

III. *Delegation of Authority:* All delegations and redelegations of authority made by officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

IV. *Funds, Personnel, and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: December 11, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–31242 Filed 12–17–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: NCHS Questionnaire Design Research Laboratory (OMB No. 0920–0222)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The NCHS Questionnaire Design Research Laboratory (QDRL) conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey) and other federally sponsored surveys. The most common questionnaire evaluation method is the cognitive interview. In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, probes the participant in depth about interpretations of questions, recall processes used to answer questions and adequacy of response categories to express answers, while noting points of confusion and errors in responding.

Interviews are generally conducted in small rounds of 12 interviews; the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights. When possible, cognitive interviews are conducted in the survey's intended mode of administration. For example, when testing telephone survey questionnaires, participants often respond to the questions via a telephone in a laboratory room. This method forces the participant to answer without face-to-face interaction, yet it still allows QDRL staff to observe response difficulties, and to conduct a face-to-face debriefing. Five types of activities will be carried out: (1) Survey questionnaire development and testing based on cognitive interviewing methodology; (2) Research on the cognitive aspects of survey methodology; (3) Research on computer-user interface design for computer-assisted instruments, also known as usability testing; (4) Pilot household interviews; and (5) Studies of the optimal design and presentation of statistical, graphical and textual materials.

In general, cognitive interviewing provides useful data on questionnaire performance at minimal cost and respondent burden (note that respondents receive remuneration for their travel and effort). Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. The estimated annualized burden for this data collection is 600 hours. CDC is requesting OMB approval of this data collection for 3 years.

Anticipated 2004–2007 projects	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
QDRL Laboratory Interviews:			
(1) National Health Interview Survey (NHIS) modules	100	1	1.25

Anticipated 2004–2007 projects	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
(2) Behavioral Risk Factor Surveillance System Survey (BRFSS)	50	1	1.25
(3) Healthy People 2010 (HP 2010)	50	1	1.25
(4) National Survey of Family Growth (NSFG)	50	1	1.25
(5) Pregnancy Risk Assessment Monitoring System (PRAMS)	50	1	1.25
(6) National Health and Nutrition Examination Survey (NHANES)	50	1	1.25
(7) Other questionnaire testing:			
2004	100	1	1.25
2005	100	1	1.25
2006	100	1	1.25
(8) Perceptions of Quality of Life project	80	1	1.25
(9) Perceptions of Confidentiality Project	50	1	1.25
(10) Perception of Statistical Maps Project	50	1	1.25
(11) General Methodological Research	100	1	1.25
Pilot Household Interviews:			
2004 NHIS Modules	50	1	1.25
2005 NHIS Modules	50	1	1.25
2006 NHIS Modules	50	1	1.25
Focus Groups (10 groups of 10 for three years)	300	1	1.50

Dated: December 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control And Prevention.

[FR Doc. 03–31187 Filed 12–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity To Collaborate in the Evaluation of Topical Microbicides To Reduce Sexual Transmission of Human Immunodeficiency Virus (HIV)

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (DHHS).

ACTION: Opportunities for collaboration for evaluation of topical microbicides.

The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention-Surveillance and Epidemiology (DHAP–SE), Epidemiology Branch (EpiBr), announces an opportunity for collaboration to evaluate the safety and preliminary efficacy of topical microbicides designed for vaginal and/or rectal application to reduce HIV transmission. These evaluations will include in-vitro assays, macaque studies, and phase I/phase II trials in women and men.

SUMMARY: The Division of HIV/AIDS Prevention-Surveillance and Epidemiology (DHAP–SE) of the National Center of HIV, STD, and TB Prevention (NCHSTP) at the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (DHHS) seeks one or more pharmaceutical, biotechnical, or other companies that hold a proprietary position on agents which may be useful as microbicides to prevent sexual transmission of HIV infection. The selected company and CDC will execute an Agreement under which the company will provide a product for CDC to study the product's safety and preliminary efficacy as a topical microbicide. Initial studies will include in-vitro assays and may include macaque studies. Agents will be selected for phase I and phase II trials in women and men based upon data obtained in the CDC studies as well as other available published and unpublished safety and efficacy data. Each collaboration would have an expected duration of one (1) to five (5) years. The goals of the collaboration include the timely development of data to further the identification and commercialization of effective topical microbicides and the rapid publication of research findings to increase the number of HIV prevention technologies proven effective and available for use.

Confidential proposals, preferably 10 pages or less (excluding appendices), are solicited from companies with patented or licensed agents which have undergone sufficient preclinical testing to be prepared to submit an Investigational New Drug (IND) application to the FDA within six months of submitting the proposal.

DATES: This Notice will be open indefinitely.

ADDRESSES: Formal proposals should be submitted to Carmen Villar, Epidemiology Branch, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, NCHSTP, CDC, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333; Phone: (direct) 404–639–5259, (office) 404–639–6130; Fax: 404–639–6127; e-mail: *CVillar@cdc.gov.* Scientific questions should be addressed to Lisa A. Grohskopf, MD, MPH, Epidemiology Branch, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, NCHSTP, CDC, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333; Phone: (direct) 404–639–6116, (office) 404–639–6146; Fax: 404–639–6127; e-mail: *lkg6@cdc.gov.* Inquiries directed to ''Agreement'' documents related to participation in this opportunity should be addressed to Thomas E. O'Toole, MPH, Deputy Director, Technology Transfer Office, CDC, 1600 Clifton Road, Mailstop K–79, Atlanta, GA 30333; Phone: (direct) 770–488–8611, (office) 770–488–8607; Fax: 770–488–8615; e-mail: *TEO1@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Technology Available

One mission of the Epidemiology Branch (EpiBr) of DHAP–SE/NCHSTP is to develop and evaluate biomedical interventions to reduce HIV transmission. To this end, the EpiBr is establishing contracts to conduct phase I and phase II trials of topical microbicides. EpiBr also funds research in the Division of AIDS, STD, and TB Laboratory Research (DASTLR) of the National Center for Infectious Diseases (NCID) at CDC and with external laboratories to conduct macaque studies and in-vitro studies in support of human microbicide trials. The goal of these efforts is to provide scientific and technical expertise and key resources

for the evaluation of topical microbicides through late preclinical, phase I and phase II safety and phase II efficacy clinical trials.

Technology Sought

EpiBr now seeks potential collaborators having licensed or patented agents for use as vaginal and/or rectal microbicides which:

(1) Have laboratory or animal model evidence of anti-HIV activity;

(2) Have been formulated for vaginal or rectal application;

(3) Are not entering phase III clinical trial in the next 12 months;

(4) Have sufficient preclinical data to submit an IND application within approximately six months following submission of proposal; and

(5) Have manufacturing arrangements for production of clinical trial-grade product (and applicator if necessary) under Good Manufacturing Process (c-GMP) standards.

NCHSTP and Collaborator Responsibilities

The NCHSTP anticipates that its role may include, but not be limited to, the following:

(1) Providing intellectual, scientific, and technical expertise and experience to the research project;

(2) Planning and conducting preclinical (in-vitro and in-vivo) research studies of the agent and interpreting results;

(3) Publishing research results;

(4) Depending on the results of these preclinical investigations, NCHSTP may elect to conduct additional research with macaques to evaluate safety and/or efficacy proof-of-concept; and

(5) Depending on the results of preclinical and/or macaque studies and FDA approval, NCHSTP may elect to conduct phase I/II clinical trials of the agent.

The NCHSTP anticipates that the role of the successful collaborator(s) will include the following:

(1) Providing intellectual, scientific, and technical expertise and experience to the research project;

(2) Participating in the planning of research studies, interpretation of research results, and as appropriate, joint publication of conclusions;

(3) Providing NCHSTP access to necessary proprietary technology and/or data in support of the research activities; and

(4) Providing NCHSTP clinical grade (c-GMP) agent for use in preclinical and clinical studies covered in this collaboration.

Other contributions may be necessary for particular proposals.

Selection Criteria

In addition to evidence of the ability to fulfill the roles described above, proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following:

(1) Data on the in-vitro anti-HIV activity of the agent;

(2) Animal and other data on the safety of the agent when applied to mucosal surfaces;

(3) Data on the effects of the agent on vaginal and/or rectal commensal microbial organisms; and

(4) Data on the in-vitro activity of the agent against other sexually transmitted organisms.

Dated: December 11, 2003.

Joseph R. Carter,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 03–31186 Filed 12–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Information Hotline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we have revised the Advisory Committee Information Hotline (the hotline). The hotline provides the public with access to the most current information available on FDA advisory committee meetings. This notice supersedes all previously published announcements of FDA's Advisory Committee Information Hotline.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Committee Management Officer (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The Advisory Committee Information Hotline can be accessed by dialing 1–800–741–8138 or 301–443–0572. The advisory committee meeting information and information updates can also be accessed via FDA's Advisory Committee calendar at *http://www.fda.gov/oc/advisory/accalendar/accalendar.html*.

Each advisory committee is assigned a 10-digit number. This 10-digit number will appear in each individual notice of meeting. The public can obtain information about a particular advisory committee meeting by using the committee's 10-digit number. Information on the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made. The following is a list of each advisory committee's 10-digit number to be used when accessing the hotline.

ADVISORY COMMITTEE	NUMBER
OFFICE OF THE COMMISSIONER	
Science Board to the FDA	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	3014512388
Biological Response Modifiers Advisory Committee	3014512389
Blood Products Advisory Committee	3014519516
Transmissible Spongiform Encephalopathies Advisory Committee	3014512392
Vaccines and Related Biological Products Advisory Committee	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH	
Anesthetic and Life Support Drugs Advisory Committee	3014512529
Anti-Infective Drugs Advisory Committee (Peds SubC)	3014512530
Antiviral Drugs Advisory Committee	3014512531
Arthritis Advisory Committee	3014512532
Cardiovascular and Renal Drugs Advisory Committee	3014512533

ADVISORY COMMITTEE	NUMBER
Dermatologic and Ophthalmic Drugs Advisory Committee	3014512534
Drug Safety and Risk Management Advisory Committee (Drug Abuse Subcommittee)	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	3014512536
Gastrointestinal Drugs Advisory Committee	3014512538
Nonprescription Drugs Advisory Committee	3014512541
Oncologic Drugs Advisory Committee	3014512542
Peripheral and Central Nervous System Drugs Advisory Committee	3014512543
Pharmaceutical Science, Advisory Committee for	3014512539
Psychopharmacologic Drugs Advisory Committee	3014512544
Pulmonary-Allergy Drugs Advisory Committee	3014512545
Reproductive Health Drugs, Advisory Committee for	3014512537
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee (full committee and subcommittees)	3014510564
Additives and Ingredients Subcommittee	
Biotechnology Subcommittee	
Contaminants and Natural Toxicants Subcommittee	
Dietary Supplements Subcommittee	
Infant Formula Subcommittee	
Nutrition Subcommittee	
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	3014512398
Medical Devices Advisory Committee (comprised of 18 panels)	N/A
Anesthesiology and Respiratory Therapy Devices Panel	3014512624
Circulatory System Devices Panel	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	3014512514
Dental Products Panel	3014512518
Ear, Nose, and Throat Devices Panel	3014512522
Gastroenterology-Urology Devices Panel	3014512523
General and Plastic Surgery Devices Panel	3014512519
General Hospital and Personal Use Devices Panel	3014512520
Hematology and Pathology Devices Panel	3014512515
Immunology Devices Panel	3014512516
Medical Devices Dispute Resolution Panel	3014510232
Microbiology Devices Panel	3014512517
Molecular and Clinical Genetics Panel	3014510231
Neurological Devices Panel	3014512513
Obstetrics-Gynecology Devices	3014512524
Ophthalmic Devices Panel	3014512396
Orthopaedic and Rehabilitation Devices Panel	3014512521
Radiological Devices Panel	3014512526
National Mammography Quality Assurance Advisory Committee	3014512397
Technical Electronic Product Radiation Safety Standards Committee	3014512399
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	3014512548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	
Science Advisory Board to NCTR	3014512559
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.	3014512560

The hotline will provide the most recent information available on upcoming advisory committee meetings, guidance for making an oral presentation during the open public hearing portion of a meeting, and procedures on obtaining copies of transcripts of advisory committee meetings. Because the hotline will communicate the most current information available about any particular advisory committee meeting, this system will provide interested parties with timely and equal access to such information. The hotline should also conserve agency resources by reducing the current volume of inquiries individual FDA offices and employees must handle concerning advisory committee schedules and procedures.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 10, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–31157 Filed 12–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0371]

Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Human Dura Mater.'' This guidance document describes a means

by which human dura mater may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify this device type into class II (special controls).

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Human Dura Mater'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 22, 2002 (67 FR 64835), FDA published a proposed rule to classify human dura mater into class II (special controls). FDA identified the draft guidance document entitled ''Class II Special Controls Guidance Document: Human Dura Mater; Draft Guidance for Industry and FDA'' as the special control, in conjunction with general controls, that is capable of providing reasonable assurance of safety and effectiveness for this device.

FDA invited interested persons to comment on the draft guidance by January 21, 2003. FDA received one comment that informed the agency of research findings concerning Creutzfeldt-Jakob Disease. The comment did not express any opinion on the guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the human dura mater device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA)(44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E; OMB Control No. 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB Control No. 0910–0485.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive a copy of ''Class II Special Controls Guidance Document: Human Dura Mater'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (054) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: December 5, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiologiccal Health.

[FR Doc. 03–31175 Filed 12–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

ACTION: Notice of funding availability for Statewide Family Network Grants.

Authority: Section 520 A of the Public Health Service Act, as amended and subject to the availability of funds.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2004 funds for Statewide Family Network Grants. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov*.

For complete instructions, potential applicants must obtain a copy of the standard Infrastructure Grants Program Announcement (INF–04 PA), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including Statewide Family Network Grants. Additional instructions and requirements specific to the Statewide Family Network Grants are described below.

Funding Opportunity Title: Statewide Family Network Grants.

Announcement Type: Initial.

Funding Opportunity Number: SM 04–004.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: February 27, 2004.

You will be notified by postal mail that your application has been received.

Note: Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due April 27, 2004.

Funding Instrument: Grant.

Funding Opportunity Description: The Statewide Family Networks program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse service systems to support programs and services. SAMHSA's Infrastructure Grants are intended for applicants seeking Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health service delivery. Statewide Family Network Grants are intended for applicants seeking Federal support to act as ''Agents of Transformation'' in developing or enhancing their service system infrastructure in order to support effective substance abuse and/or mental health service delivery which is consumer and family driven. The Statewide Family Network Program is a critical part of the SAMHSA/CMHS effort to implement the President's New Freedom Commission on Mental Health Report.

The purpose of the Statewide Family Networks program is to enhance State capacity and infrastructure to be more oriented to the needs of children and adolescents with serious emotional disturbances and their families. The programs goals are to: (1) Strengthen organizational relationships; (2) foster leadership and business management skills among families of children and adolescents with serious emotional disturbance; and (3) identify and address the technical assistance needs of children and adolescents with serious emotional disturbances and their families. To achieve this goal, the program assists family members around the country to work with policy makers and service providers to improve services for children and adolescents with serious emotional disturbances and their families. The Statewide Family Networks Program is designed to ensure that families are the catalysts for transforming the mental health and related systems in their State by strengthening coalitions among family members, and between family members and policymakers and service providers, recognizing that family members are the best and most effective change agents.

Background: The Statewide Family Network Program builds on the work of The Child, Adolescent and Services Systems Program (CASSP), which helped to establish a child and family focus in programs serving children and adolescents with serious emotional disturbances around the county. Today, nearly every State has active family organizations dedicated to promoting systems of care that are responsive to the needs of children and adolescents with serious emotional disturbances and their families. Although significant progress has been made, further support will ensure self-sufficient, empowered networks that will effectively participate in State and local mental health services planning and health care reform activities related to improving community-based services for children and adolescents with serious emotional disturbances and their families.

Estimated Funding Available/Number of Awards: It is expected that $2.8 million will be available to fund 43 awards in FY 2004, with a limit of one award per State. Only Category 1—Small Infrastructure Grant awards, as defined in the INF–04 PA, will be made. In general, these Category 1 awards are expected to be up to $60,000 per year in total costs (direct and indirect). Up to 22 grantees with projects that include a youth leadership component may receive an additional $10,000 per year. Applications without a youth leadership component that include proposed budgets that exceed $60,000 in any year will be returned without review. Applications with a youth leadership component that include proposed budgets that exceed $70,000 in any year will be returned without review. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. This program is being announced prior to the annual appropriation for FY 2004 for SAMHSA's programs, with funding estimates based on the President's budget request for FY 2004 and/or preliminary Congressional action on SAMHSA's appropriation. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2004 to permit funding of a reasonable number of applications hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner. All applicants are reminded, however, that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Period of Support: Awards will be made for project periods of up to three years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Eligible Applicants: Eligible applicants are limited to domestic private, nonprofit entities, including faith-based entities, tribal family organizations, and currently funded Statewide Family Networks grantees that: (1) Are controlled and managed by family members; (2) are dedicated to the improvement of mental health services statewide; and (3) have a Board of Directors comprised of no less than 51 percent family members. SAMHSA is limiting eligibility to family-controlled organizations because the goals of this grant program are to: strengthen the capacity of families to act as agents of transformation in influencing the type and amount of services provided to them and to their children who have a serious emotional disturbance and to ensure that their mental health care is consumer and family driven. Applicants will be required to complete and sign a Certification of Eligibility and provide necessary supportive documentation. This certification will be provided in the application kit, available from the National Mental Health Information Center, and will also be posted on the SAMHSA Web page along with the NOFA.

Additional information regarding eligibility, including program requirements and formatting requirements, is provided in the INF–04 PA. Applications that do not comply with these requirements will be screened out and will not be reviewed.

Is Cost Sharing or Matching Required: No.

Exceptions to the INF–04 and Other Special Requirements: The following information describes exceptions or limitations to the INF–04 PA and provides special requirements that pertain only to the Statewide Family Network Grants:

- *Review Criteria/Project Narrative:* Applicants for Statewide Family Networks grants are required to address the following requirements in the Project Narrative of their applications, in addition to the requirements specified in the INF–04 PA:

(1) In Section B, applicants must describe how the primary focus of the proposed project will be on training capacity, network development (*i.e.*, with other consumer and family organizations), organizational and

community readiness, and policy development to support best practices.

(2) In Section B, applicants must describe the applicant's collaborations with other family and consumer networks, the State Director of Consumer Affairs (if applicable), family representatives on the State Planning Council, and other disability groups.

(3) In Section C, applicants must describe the applicant's organizational mission and how its scope of work reflects statewide focus on families who have children, youth and adolescents up to age 18 with a serious emotional, behavior or mental disorder and are currently receiving services, or up to age 25 with a serious emotional, behavior or mental disorder and are receiving transitional services from children to adult services.

(4) In Section C, applicants must describe the extent to which the applicant's Board of Directors includes family members whose children up to age 18 with a serious emotional, behavior or mental disorder and are currently receiving services, or up to age 25 with a serious emotional, behavior or mental disorder and are receiving transitional services from children to adult services.

(5) Applicants must clearly indicate in their applications whether or not a youth leadership component is included in the proposed project. Applicants that include a youth leadership component must include relevant information about the youth leadership component in *all* sections of the Project Narrative and Supporting Documentation. For example, Section A must address the need for a youth leadership component in the State where the project will be located, Section B must include a description of the proposed approach for implementing a youth leadership component, Section C must include a description of the staff, management and related experience for the youth leadership component, and Section D must include a description of evaluation and data activities for the youth leadership component. The budget for the youth leadership component provided in Section E must be separately justified and may not exceed $10,000.

Performance Measurement: All SAMHSA grantees are required to collect performance data so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). In Section D of their applications, applicants for the Statewide Family Networks program must document their ability to collect and report data on the following indicators:

- An increase of families served; and
- An increase in the number of grantees that demonstrate inclusion of consumers [adolescents and young adults transitioning to adult services] and family members in planning, policy, and service delivery decisions through (a) Having policies in place; and (b) data on consumers [adolescents and young adults transitioning to adult services] and family member participation.

SAMHSA will work with grantees to finalize a standard methodology related to these indicators shortly after award. The data collection tool is yet to be developed. Grantees will be required to report performance data to SAMHSA on an annual basis.

Application and Submission Information: Complete application kits may be obtained from: the National Mental Health Information Center at 1–800–789–2649. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities'') and the INF–04 PA is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp.*

When submitting an application, be sure to type ''SM 04–004, Statewide Family Networks'' in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Intergovernmental Review: Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O.12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Grantees must comply with the requirements of E.O. 12372. Instructions for complying with E.O. 12372 are provided in the INF–04 PA. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for completing the PHSIS are provided in the INF–04 PA.

Application Review Information: SAMHSA applications are peer-reviewed. For those programs where the individual award is over $100,000, applications must also be reviewed by the Appropriate National Advisory Council. Decisions to fund a grant are based on the strengths and weaknesses of the application as identified by the peer review committee and approved by the National Advisory Council, and the availability of funds. Unless otherwise specified, SAMHSA intends to make not more than one award per organization per funding opportunity in any given fiscal year.

Checklist for Application Formatting Requirements: SAMHSA's desire is to review all applications submitted for grant funding. However, this desire must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. Your application must adhere to these formatting requirements. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be specified in the NOFA. Please check the entire NOFA before preparing your application.

- Use the PHS 5161–1 application.
- The 10 application components required for SAMHSA applications must be included (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)
- Text must be legible.
- Paper must be white paper and 8.5″ by 11.0″ in size.
- Pages must be single-spaced with one column per page.
- Margins must be at least one inch.
- Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables,

graphs, and footnotes will not be considered in determining compliance.)

- Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.
- Pages cannot have printing on both sides.
- Page limitations specified for the Project Narrative (25 pages) and Appendices 1, 3, and 4 (30 pages) cannot be exceeded.
- Information provided must be sufficient for review.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.
- Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines, will be screened out and returned to the applicant without review:
- Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section VIII–A of this document.
- Budgetary limitations as specified in Sections I, II and IV–E of this document.
- Documentation of nonprofit status as required in the PHS 5161–1.

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Award Administration: Award information, including information about award notices, administrative requirements and reporting requirements, is included in the INF–04 PA.

Contact for Additional Information: Elizabeth Sweet, SAMHSA/CMHS, Child, Adolescent and Family Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–16, Rockville, MD 20857; 301–443–1333; E-mail: *esweet@samhsa.gov.*

Dated: December 12, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services, Administration.

[FR Doc. 03–31158 Filed 12–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

ACTION: Notice of funding availability for Statewide Consumer Network Grants.

Authority: Section 520 A of the Public Health Service Act, as amended and subject to the availability of funds.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), announces the availability of FY 2004 funds for Statewide Consumer Network Grants. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov.*

For complete instructions, potential applicants must obtain a copy of the standard Infrastructure Grants Program Announcement (INF–04 PA), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including Statewide Consumer Network Grants. Additional instructions and requirements specific to Statewide Consumer Network Grants are described below.

Funding Opportunity Title: Statewide Consumer Network Grants (Short Title: Statewide Consumer Networks).

Announcement Type: Initial.

Funding Opportunity Number: SM 04–003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: February 25, 2004.

You will be notified by postal mail that your application has been received.

[**NOTE:** Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due April 25, 2004.]

Funding Instrument: Grant.

Funding Opportunity Description: The Statewide Consumer Networks program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse service systems to support programs and services. SAMHSA's Infrastructure Grants are intended for applicants seeking Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health service delivery. Statewide Consumer Network Grants are intended for applicants seeking Federal support to act as ''Agents of Transformation'' in developing or enhancing their service system infrastructure in order to support effective substance abuse and/or mental health service delivery which is consumer driven. The Statewide Consumer Network Grant Program is a critical part of the SAMHSA/CMHS efforts to implement the recommendations of the Final Report of the President's New Freedom Commission on Mental Health.

The purpose of the Statewide Consumer Networks program is to enhance State capacity and infrastructure to be consumer-centered and targeted toward recovery and resiliency and consumer-driven by promoting the use of consumers as agents of transformation. The program goals are to (1) strengthen organizational relationships; (2) promote skill development with an emphasis on leadership and business management; and (3) identify technical assistance needs of consumers and provide training and support to ensure that they are the catalysts for transforming the mental health and related systems in their State. To achieve this goal, the program assists consumer organizations around the country to work with policymakers and services providers to improve services for consumers with a serious mental illness. The Program is designed to strengthen coalitions among consumers, policymakers and service providers, recognizing that the

consumers are the best and most effective change agents.

The Statewide Consumer Network grants will support State-level consumer-run organizations to assist consumers to participate in the development of policies, programs, and quality assurance activities related to the Final Report of the President's New Freedom Commission on Mental Health as it applies to mental health service delivery. Grantees are especially encouraged to utilize training capacity, network development, organizational and community readiness, and policy development to support best practices but are not limited to these specific activities. Examples of the types of community services that grantees will work to improve include State planning boards and councils, individualized plans of care, anti-stigma initiatives, interactions with the criminal justice system, supported employment programs, rights protection, cultural competence, outreach to people in rural areas, people of color and older-adults: research on recovery, trauma and medication; evidence based determinations and applications; workforce development; tele-health and other on line supports including personal recovery pages.

Background: The Statewide Consumer Network Grant Program builds on the work of the Federal Community Support Program (CSP). The Center for Mental Health Services has supported the development of accessible, responsive mental health treatment, rehabilitation, and supportive services for people with a serious mental illness through CSP. The mission of CSP is to promote the development of systems of care which help adults with serious mental illness recover, live independently and productively in the community, and avoid inappropriate use of institutions.

CSP helped to establish consumer and family organizations throughout the country. Today, nearly every State has an active consumer organization dedicated to promoting systems of care that are responsive to the needs of people with a serious mental illness. By providing appropriate training and tools in the development of individualized mental health plans, understanding the need and use of accountability and evaluation measures, and the many other self-help, self-management skills, consumers can provide the guidance and foresight into changing the present system to a recover-oriented system for all peers and thereby ensuring the implementation of the goals of the Final Report of the President's New Freedom Commission on Mental Health.

Estimated Funding Available/Number of Awards: It is expected that $1.5 million will be available in FY 2004 to fund approximately 20–22 awards of up to $70,000 per year in total costs (direct and indirect), with a limit of one award per State. It is expected that only Category 1-Small Infrastructure Grant awards, as defined in the INF–04 PA, will be made. Applications that include proposed budgets that exceed $70,000 in any year will be returned without review. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. This program is being announced prior to the annual appropriation for FY 2004 for SAMHSA's programs, with funding estimates based on the President's budget request for FY 2004 and/or preliminary Congressional action on SAMHSA's appropriation. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2004 to permit funding of a reasonable number of applications hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner. All applicants are reminded, however, that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Eligible Applicants: Eligible applicants are limited to domestic private, nonprofit entities, including faith-based entities and currently funded Statewide Consumer Network Grantees that (1) are controlled and managed by mental health consumers; (2) are dedicated to the improvement of mental health services statewide; and (3) have a Board of Directors comprised of more than 51 percent consumers. SAMHSA is limiting eligibility to consumer-controlled organizations because the goals of this grant program are to: to strengthen the capacity of consumers to act as agents of transformation in influencing the type and amount of services and supports provided to people with a serious mental illness and to ensure that their mental health care is consumer driven. Applicants will be required to complete and sign a Certification of Eligibility and provide necessary supportive documentation. This certification will be provided in the application kit, available from the National Mental Health Information Center, and will also be posted on the SAMHSA Web page along with the NOFA.

Additional information regarding eligibility, including program requirements and formatting requirements, is provided in the INF–04 PA. Applications that do not comply with these requirements will be screened out and will not be reviewed.

Period of Support: Awards will be made for project periods of up to three years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Is Cost Sharing or Matching Required: No.

Exceptions to the INF–04 and Other Special Requirements: The following information describes exceptions or limitations to the INF–04 PA and provides special requirements that pertain only to the Statewide Consumer Network Grants:

• *Review Criteria/Project Narrative*—Applicants for Statewide Consumer Networks grants are required to address the following requirements in the Project Narrative of their applications, in addition to the requirements specified in the INF–04 PA:

(1) In Section B, applicants must describe how the primary focus of the proposed project will include work to transform the system through specific training and capacity building activities, and network and policy development that reflects the goals of the Final Report of the President's New Freedom Commission on Mental Health.

(2) In Section B, applications must describe the applicant's collaborations with other family and consumer networks, the State Director of Consumer Affairs in the State office of mental health (if applicable), consumers on the State Planning Council, and other disability groups.

(3) In Section C, applicants must describe the applicant's organizational mission and how its scope of work reflects statewide focus on consumers with a serious mental illness and promotes the concepts of consumer self-help; management plan and staffing.

• Performance Measurement—All SAMHSA grantees are required to collect performance data so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). In Section D of their applications, applicants for the Statewide Consumer Networks Program must document their ability to collect and report data on all the following indicators:

• An increase in the number of consumers served; and

• An increase in the number of consumers and family members in planning, policy, and service delivery decisions by (a) having policies in place; and (b) data on consumers and family member participation.

SAMHSA will work with grantees to finalize a standard methodology related to these indicators shortly after award. The data collection tool has not yet been developed. Grantees will be required to report performance data to SAMHSA on an annual basis.

Application and Submission Information: Complete application kits may be obtained from: the National Mental Health Information Center at 1–800–789–2649. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities'') and the INF–04 PA is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp.*

When submitting an application, be sure to type ''SM 04–003, Statewide Consumer Networks'' in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Intergovernmental Review: Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O. 12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for complying with E.O. 12372 are provided in the INF–04 PA. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for completing the PHSIS are provided in the INF–04 PA.

Application Review Information: SAMHSA applications are peer-reviewed. For those programs where the individual award is over $100,000, applications must also be reviewed by the Appropriate National Advisory Council. Decisions to fund a grant are based on the strengths and weaknesses of the application as identified by the peer review committee and approved by the National Advisory Council, and the availability of funds. Unless other wise specified, SAMHSA intends to make not more than one award per organization per funding opportunity in any given fiscal year.

Checklist for Application Formatting Requirements: SAMHSA's desire is to review all applications submitted for grant funding. However, this desire must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. Your application must adhere to these formatting requirements. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be specified in the NOFA. Please check the entire NOFA before preparing your application.

• Use the PHS 5161–1 application.

• The 10 application components required for SAMHSA applications must be included (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)

• Text must be legible.

• Paper must be white paper and 8.5″ by 11.0″ in size.

• Pages must be single-spaced with one column per page.

• Margins must be at least one inch.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.

• Pages cannot have printing on both sides.

• Page limitations specified for the Project Narrative (25 pages) and Appendices 1, 3, and 4 (30 pages) cannot be exceeded.

• Information provided must be sufficient for review.

• Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.

• Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines, will be screened out and returned to the applicant without review:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section VIII–A of this document.

• Budgetary limitations as specified in Sections I, II and IV–E of this document.

• Documentation of nonprofit status as required in the PHS 5161–1.

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

Award Administration: Award information, including information about award notices, administrative requirements and reporting

requirements, is included in the INF–04 PA.

FOR FURTHER INFORMATION CONTACT: Risa Fox, SAMHSA/Center for Mental Health Services, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857; 301–443–3653; E-mail: *rfox@samhsa.gov.*

Dated: December 12, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–31159 Filed 12–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Annual User Fee for Customs Broker Permit and National Permit; General Notice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of due date for Customs broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by February 27, 2004. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: February 27, 2004.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Management, (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the general notice published in the **Federal Register**, volume 60, no. 187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2004, the due date of the user fee is February 27, 2004. It is expected that the annual user fees for brokers for subsequent years will be due on or about the 20th of January of each year.

Dated: December 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–31237 Filed 12–17–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Indian Affairs; Application Deadline for Self-Governance in 2005

AGENCY: Office of Self-Governance and Self-Determination, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance and Self-Determination (OSG) establishes a March 1, 2004, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2005 or calendar year 2005.

DATES: Completed application packages must be received by March 1, 2004.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to William A. Sinclair, Director, Office of Self-Governance and Self-Determination, Department of the Interior, Mail Stop 2548, 1849 C Street, NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance and Self-Determination, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208) the Director, Office of Self-Governance and Self-Determination may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice 25 CFR 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2005 and calendar year 2005. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2005 or calendar year 2005 must respond to this notice, except for those which are (1) currently involved in negotiations with the Department; (2) one of the 83 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–31161 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Tallahatchie, Dahomey, and Coldwater River National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Tallahatchie, Dahomey, and Coldwater River National Wildlife Refuges, located in the State of Mississippi.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act

and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise our agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to Stephen W. Gard, Project Leader, North Mississippi National Wildlife Refuge Complex, 2776 Sunset Drive, P.O. Box 1070, Grenada, Mississippi 38901; Telephone: 662/226–8286; Fax: 662/226–8488; E-mail: *FWR4RWNorthMSRefuges@fws.gov.*

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input in the planning process is essential as the Service establishes management priorities and explores opportunities for non-invasive and low-impact activities.

Tallahatchie National Wildlife Refuge, established in 1990, is located in Grenada and Tallahatchie Counties, Mississippi. It consists of 4,083 acres and is managed primarily to provide habitat for migratory waterfowl. Refuge objectives are to create a woodland corridor along Tippo Bayou for migratory neotropical songbirds, convert marginal agricultural land to hardwood forests, and provide fallow field habitat for wintering grassland birds.

Dahomey National Wildlife Refuge, also established in 1990, is located in Bolivar County, Mississippi. It consists of 9,691 acres, and is the largest remaining tract of bottomland hardwood forested wetlands in the northwest portion of Mississippi. Objectives are to provide habitat for migratory waterfowl and other migratory birds, and to provide recreational use and environmental education to the public.

Coldwater River National Wildlife Refuge, established in 1991, is located in Tallahatchie and Quitman Counties, Mississippi. It consists of 2,202 acres, much of which is inaccessible during the winter months due to backwater flooding of the Tallahatchie River. Objectives are to provide habitat for migratory waterfowl, shorebirds, and wading birds; convert marginal agricultural land to hardwood forests; and provide fallow field habitat for wintering grassland birds.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: November 14, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–31165 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 20, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Gerald L. Otterbacher, Medina, OH, PRT–074571.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George H. Brannen, II, Inverness, FL, PRT–080563.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard B. Nilsen, Ft. Lauderdale, FL, PRT–077045.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: James A. Shipley, Highland, MI, PRT–077046.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: John L. Schwabland, Jr., Seattle, WA, PRT–077047.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Ralph S. Cunningham, Montgomery, TX, PRT–077050.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Dan L. Duncan, Houston, TX, PRT–077051.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–079034.

The applicant requests a permit to re-export biological samples from maned wolf (*Chrysocyon brachyurus*) to Dr. Beat Bigler, Bern, Switzerland, for the purpose of diagnostic and scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: James J. Homann, Sr., Omaha, NE, PRT–080210.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Atlanta Zoo, Atlanta, GA, PRT–080016.

The applicant requests a permit to import frozen semen samples from one male giant panda (*Ailuropoda melanoleuca*) from the Chengdu Research Base of Giant Panda Breeding, China, for the purpose of artificial insemination for scientific research and propagation for the enhancement of the survival of the species.

Applicant: Michelle L. Sauther, University of Colorado, Boulder, CO, PRT–040035.

The applicant requests an amendment and renewal of their permit to import biological samples from ring-tailed lemur (*Lemur catta*) collected in the wild in Madagascar, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Cleveland Metroparks Zoo, Cleveland, OH, PRT–080013.

The applicant requests a permit to import two male and two female captive born ocelots (*Leopardus pardalis*) from several zoos in Brazil, as part of the Brazilian Ocelot Consortium (BOC), for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Ronald J. Bartels, Schriever, LA, PRT–080350.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: December 5, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

FR Doc. 03–31212 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111—4056, and must be received on or before January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number TE 056081–1

Applicant: EnviroScience, Incorporated, Stow, Ohio.

The applicant requests a permit to take (collect) listed fish and mussel species throughout the State of Georgia. Activities are proposed to identify populations of listed species and to develop methods to minimize or avoid project related impacts to those populations. The scientific research is aimed at enhancement of survival of species in the wild.

Permit Number TE 023666–0

Applicant: Eric R. Britzke, Clemson University, Clemson, South Carolina.

The applicant requests a permit to take (collect) the northern flying squirrel (*Glaucomys sabrinus*) throughout North Carolina and Virginia. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE 079161–0

Applicant: Paula K. Kleintjes, University of Wisconsin-Eau Claire, Eau Claire, Wisconsin.

The applicant requests a permit to take (harass) Karner blue butterfly (*Lycaeides melissa samuelis*) in Wisconsin. Activities are proposed for the enhancement of survival of (*Lycaeides melissa samuelis*) in Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE 079162–0

Applicant: Jeremy A. Williamson, Polk County Land and Water Resources Department, Balsam Lake, Wisconsin.

The applicant requests a permit to take (collect) Higgins' eye pearlymussel (*Lampsilis higginsi*) and winged mapleleaf (*Quadrula fragosa*) in Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE 072500

Applicant: U.S. Army Corps of Engineers, Engineer Research and Development Center, Champaign, Illinois.

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in Illinois. Activities are proposed for the enhancement of survival of the species in the wild.

Dated: December 3, 2003.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–31184 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the

address given below, by January 20, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *''victoria_davis@fws.gov''*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Claudia Frosch, Gulf Shores, Alabama, TE080231–0.

The applicant requests authorization to take (trap, handle, relocate, radio-tag, PIT-tag, and release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) and Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) while conducting presence and absence studies and population monitoring. The proposed activities would occur on Bon Secour National Wildlife Refuge, Baldwin County, Alabama; Johnson Beach of Gulf Island National Seashore, Escambia County, Florida; Perdido Key State Recreation Area, Escambia County, Florida; and Alabama Point, Baldwin County, Alabama.

Applicant: Jereme N. Phillips, Gulf Shores, Alabama, TE080229–0.

The applicant requests authorization to take (trap, mark, recapture, and release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) while conducting presence and absence studies. The proposed activities would occur on Bon Secour National Wildlife Refuge, Baldwin County, Alabama.

Dated: December 3, 2003.

Jackie Parrish,

Acting Regional Director.

[FR Doc. 03–31185 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to Delist the Preble's Meadow Jumping Mouse in Colorado and Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. We find that the petition and additional information in our files did not present substantial scientific or commercial information indicating that delisting may be warranted. We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to this species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on December 11, 2003. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: Questions or information concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 755 Parfet, Lakewood, Colorado 80215. The separate petition finding, supporting data, and comments are available for public review, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Linner at 303–275–2370 (*see* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information readily available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The Preble's meadow jumping mouse is a small rodent in the family Zapodidae and is 1 of 12 recognized subspecies of the species *Zapus hudsonius,* the meadow jumping mouse. Preble's is native only to the Rocky Mountains-Great Plains interface of eastern Colorado and southeastern Wyoming. This shy, largely nocturnal mouse is 8 to 9 inches long (its tail accounts for 60 percent of its length) with hind feet adapted for jumping. It occurs in foothills riparian habitat from southeastern Wyoming to south central Colorado. Preble's meadow jumping mice regularly use upland grasslands adjacent to riparian habitat, and they may be dependent upon some amount of open water. The species hibernates near riparian zones from mid-October to early May. Loss of riparian habitats and other factors associated with urbanization appear to be the major threat to the species.

On August 16, 1994, the Service received a petition from the Biodiversity Legal Foundation to list the Preble's

meadow jumping mouse. On March 15, 1995, the Service published a notice of the 90-day finding that the petition presented substantial information indicating that listing the Preble's may be warranted, and requested comments and biological data on the status of the mouse (60 FR 13950). On March 25, 1997, the Service issued a 12-month finding on the petition action along with a proposed rule to list Preble's as an endangered species and announced a 90-day public comment period (62 FR 14093), with subsequent reopenings of the comment period to gather additional information (62 FR 24387, 62 FR 67041). The Service added the Preble's meadow jumping mouse to the List of Endangered and Threatened Wildlife in 50 CFR 17.11 as a threatened species on May 13, 1998 (63 FR 26517).

On July 27, 1999, the Service received a petition to delist the Preble's, dated July 20, 1999. The Service subsequently received two other petitions to delist the Preble's—one dated July 26, 1999, and one dated August 27, 2000. These petitions are being treated as second petitions for the requested delisting action, and both have been considered in this 90-day finding.

Review of the Petition

In requesting that the Service delist the Preble's, the first petitioner stated that the information available to the Service did not justify a listing and asked the Service to ''set aside'' the Act relative to the Preble's to allow time to gather more information. The third petitioner stated that, because the information available on the Preble's is limited, the Service's listing of the subspecies was ''precipitate and uninformed.'' The Service is mandated to use the best scientific information available at the time we make a decision to list a species (50 CFR 424.11(b)). Once petitioned to list a species, we are under statutory obligations as stated in the Act to complete the petition process. We did extend or reopen the comment period twice and held three public hearings to seek factual reports or information that might contribute to the development of the final rule (63 FR 26517).

The first petitioner stated that additional information was available on trapping conducted by private landowners, the Forest Service, and the State Department of Transportation that the Service did not consider in its 1998 listing and that the Service should set aside the listing to evaluate this new information. The third petitioner stated that the information coming to light in 1999 indicated a plenitude of this subspecies. Trapping conducted by private landowners, the Forest Service, and the Wyoming Department of Transportation in a number of potential habitat sites in the North Platte drainage occurred after the species was listed as threatened in 1998. Although the Service did not have this trapping information available for consideration during preparation of the 1998 listing rule, we did consider in the listing rule that the Preble's likely occurred in these areas because the species historically had been collected there and these areas have suitable habitat for the Preble's. Therefore, the Service took into consideration the likely presence of the Preble's in these surveyed locations in the 1998 listing rule.

The second petitioner stated that the reason for the delisting request was the inability to identify the mouse. We interpret this concern, that is the difficulty in differentiating Preble's from the western jumping mouse in the field, as either a concern that (1) the listing is invalid or (2) the taxonomic entity is not valid. The range of the western jumping mouse (*Zapus princeps*) in Wyoming and Colorado overlaps that of Preble's (Hall 1981), and the two species are similar in their appearance. Despite difficulties in field identification, the Preble's can be differentiated from the western jumping mouse. Compared to the western jumping mouse, the Preble's is generally smaller and has a more distinctly bicolored tail and a less obvious dorsal (back) stripe. A better technique for identification of the Preble's requires skulls of specimens housed in natural history museums, where dental characteristics (such as the presence or absence of a tooth fold on the first lower molar (Klingener 1963, Hafner 1993) or the shape of a tooth cusp) can be seen and used in combination with distribution and elevation. These techniques have been useful scientific tools for almost half a century. A third and more recent technique to identify Preble's uses a combination of skull measurements in addition to the tooth fold (which may not always be reliable by itself due to tooth wear) (Conner and Shenk in press). These techniques accurately identify most of the Preble's specimens. A fourth technique is genetic analysis. Future DNA studies, including a current study being conducted at the Denver Museum of Nature and Science, will go a long way towards resolving some of the few remaining identification inconsistencies.

In addition, ease of field identification is not a threat to be evaluated when making a listing determination. The Act requires that the Service evaluate five factors in determining whether to list a taxon as endangered or threatened. Under section 4(a)(1) of the Act, we must determine whether a species should be listed as threatened or endangered due to one or more of the following five factors—(1) present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting the species' continued existence. Our determination is statutorily limited to an evaluation of these five factors.

In response to whether the taxonomic entity is valid, the Code of Federal Regulations (50 CFR 424.11) states that in listing entities as endangered or threatened under the Act, the Service will rely on standard scientifically accepted taxonomy. The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) is a valid, scientifically accepted subspecies of meadow jumping mice (*Zapus hudsonius*) (Krutzch 1954; Clark and Stromberg 1987; Fitzgerald *et al.* 1994).

The third petitioner disagreed with the use of information available on *Zapus hudsonius* and the application of this information to *Zapus hudsonius preblei.* When information specific to a subspecies is lacking, information on the parent species may be the best information available for the Service to use. We must base our determination on the best available scientific information. Many characteristics of the species *Z. hudonius* would generally be applicable to all its subspecies, including *Z. h. preblei.*

The third petitioner stated that the original petition to list the Preble's should not have been given credence because it lacked sufficient information on the Preble's. Under the Code of Federal Regulations (50 CFR 424.13 and 424.14), the Service is required to seriously consider all petitions and utilize all available information, not just the petitioner's, when making its determination. In the 1998 listing rule, we relied on a host of scientific information available on the species concerning the threats it faced and did not make our determination based solely on the information provided in the original petition.

The third petitioner stated that the 1998 listing is inappropriate because of errors in the subspecies' geographical distribution. The third petitioner stated that the Service did not accept the identification of an individual Preble's reportedly found in Las Animas County, Colorado, because it would have raised

questions regarding the subspecies' presence in Huerfano, Costilla, and Pueblo Counties of Colorado. As stated in the 1998 listing rule, the Service did not accept this identification because further morphological analysis determined this individual to be a different species of mouse, the western jumping mouse, not the Preble's.

The third petitioner stated that favorable habitat may occur in other Colorado counties (Gilpin, Clear Creek, Fremont, Teller, Huerfano, and Costilla) that have not been surveyed. Since receipt of the third petitioner's petition, surveys have been undertaken in Fremont and Teller Counties. Gilpin, Clear Creek, and Teller are high-elevation counties west of known Preble's distribution with almost no favorable habitat. The only favorable habitat would occur where these counties meet lower elevation neighboring counties. The lower elevation habitat within the South Platte River drainage in northern Teller County may be occupied by the Preble's near the Jefferson County line. Surveys identified one Preble's mouse at approximately the county line but none upstream within Teller County. The habitat in Teller County is very limited in extent because the elevation rapidly becomes too high upstream from Teller County's border with Jefferson County. Similarly, elevations in Gilpin and Clear Creek Counties are generally too high to support the Preble's. At the eastern edge of both counties, mountain drainages exit into Jefferson County to lower elevation streams characteristic of the subspecies' range. Surveys of lower elevation streams in Gilpin and Clear Creek Counties suggest that habitat is marginal, at best, for the Preble's. Any additional habitat in these counties would not significantly increase the size of the Preble's geographical distribution and, therefore, would not alter the threat analysis in the 1998 listing rule.

Fremont, Costilla, and Huerfano Counties are not likely to support Preble's. Surveys of possibly suitable habitats in Fremont County have failed to document the Preble's (Christina Werner, Colorado Natural Heritage Program, in litt. 2003). While a portion of Huerfano County is within the Arkansas River drainage (where Preble's has been documented in the northernmost part), Huerfano County is even further south of known Preble's range and is even less likely to have suitable habitat for the Preble's. Costilla County is in the Rio Grande drainage. It lies far from known Preble's range, south and west of the Arkansas River drainage and separated by a mountain range.

The third petitioner stated the use of Sherman live traps as a reason why the subspecies' geographical distribution cannot be fixed entirely. The geographical distribution of the subspecies was determined based on small mammal surveys conducted in Colorado and Wyoming over the past 100 years primarily using snaptraps, not Sherman live traps. Therefore, surveys using Sherman live traps were not the primary information used to determine the species' geographical distribution. The use of Sherman live traps in surveying for Preble's became standard methodology in the early 1990s, and information from these surveys has refined but not significantly altered the subspecies geographical distribution.

Additionally, the third petitioner stated that the Service did not accurately identify the Preble's geographical range because of what the petitioner stated were errors in several citations (Whitaker 1972; Compton and Hugie 1993; Harrington et. al. 1995, and Meaney and Clippenger 1996). In defining the geographical distribution, the Service used all scientific information available; it did not rely only upon the citations mentioned by the third petitioner but used other citations as well to give a full picture of the species' range.

The third petitioner cites Shenk (1998) as saying that there is insufficient information on Preble's range and ecology. While Shenk cites gaps in knowledge on the Preble's, Shenk's intent was to identify information needed to support a conservation strategy for the Preble's and was not related to the species' listing.

The third petitioner stated that population declines have not been documented. The Preble's has been extirpated from some historically occupied areas. Surveys have identified various locations where the subspecies was historically present but is now absent (Ryon 1996). Since at least 1991, the Preble's has not been found in Denver, Adams, or Arapahoe Counties in Colorado. Its absence in these counties is likely due to urban development, which has altered, reduced, or eliminated riparian habitat (Compton and Hugie 1993; Ryon 1996).

The third petitioner referred to statements made by unidentified parties about lack of historical information and about additional animals being found. We have addressed the issue of insufficient information in previous paragraphs. We address the issue of additional surveys and documentation of additional populations in response to additional statements by the third petitioner below.

Based on information that (1) the Service has identified numerous known or potential population areas, and (2) there are large numbers of unsurveyed sites, the third petitioner concludes that the Preble's is abundant and has never been threatened.

The Service did identify areas of known or potential Preble's populations to assist local governments and other entities in planning activities (63 FR 66777, December 3, 1998). The sites identified as ''potential'' Preble's population areas had not been surveyed; the presence of Preble's in these locations was considered possible, but had not been verified. This list was a preliminary estimate of potential habitat; some of these potential sites have since been found not to have suitable habitat and/or not to support Preble's populations. The potential habitats since found to support Preble's continue to be subject to the threats listed in the 1998 listing rule.

The third petitioner asserts that the numbers of known and potential Preble's habitat indicate its abundance. The list of known or potential populations identifies fragments of the original Preble's habitat. The number of fragments may appear high but represent only a small portion of the original whole. The number of separate sites reflects the amount of fragmentation that has occurred within historic habitat and is an indication of the previous and continuing threats to Preble's habitat described in the 1998 listing rule.

Additional surveys have been undertaken since the 1998 listing rule in some locations throughout the subspecies' range where habitat was believed suitable and where the species was presumed to occur but had not been documented. Some of these surveys verified Preble's presence at the survey locations; others did not. While new populations have been documented and additional animals have been found, the threat analysis in the 1998 listing rule identified significant threats to the subspecies and its habitat throughout most of its range in both known and potentially occupied areas. The newly documented populations remain subject to the threats analyzed in the 1998 listing rule.

The third petitioner stated that there is no rational definition of habitat. Typical habitat for the Preble's comprises well-developed plains riparian vegetation with adjacent undisturbed grassland communities and a nearby water source. Well-developed plains riparian vegetation typically includes a dense combination of grasses, forbs, and shrubs; a taller shrub and tree

canopy may be present (Bakeman 1997). When present, the shrub canopy is often *Salix* spp. (willow), although shrub species including *Symphoricarpus* spp. (snowberry), *Prunus virginiana* (chokecherry), *Crataegus* spp. (hawthorn), *Quercus gambelli* (Gambel's oak), *Alnus incana* (alder), *Betula fontinalis* (river birch), *Rhus trilobata* (skunkbrush), *Prunus americana* (wild plum), *Amorpha fruticosa* (lead plant), *Cornus sericea* (dogwood), and others also may occur (Bakeman 1997; Shenk and Eussen 1998).

Additional research on the species' habitat has supported and refined the definition of habitat used in the 1998 listing rule. This recent information indicates that, although Preble's have rarely been trapped in uplands adjacent to riparian areas (Dharman 2001), detailed studies of the Preble's movement patterns using radio-telemetry found Preble's feeding and resting in adjacent uplands and traveling considerable distances along streams, as far as 1.6 km (1.0 mi) in one evening (Shenk and Sivert 1999a; Shenk and Sivert 1999b; Ryon 1999; Schorr 2001). These studies suggest that the Preble's uses uplands at least as far out as 100 m (330 ft) beyond the 100-year floodplain (Ryon 1999; Tanya Shenk, Colorado Division of Wildlife, in litt. 2002).

The third petitioner also raised several issues specifically dealing with stated increased costs or private property takings or life, health, and safety issues, including disease carried by deer mice. The Code of Federal Regulations (50 CFR 424.11(b)) states that the Service must make determinations based on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

New Information Available in the Service's Files

In addition to considering information provided by the petitioners, if any, the Service also must consider the information readily available at the time of this finding. Additional information on the Preble's has become available since the species was listed in 1998 and since the petitions were received. As cited earlier, numerous surveys have been undertaken throughout the species' range in suitable habitat areas where the species was presumed to occur but had not been documented. Some of these surveys provided verification of Preble's presence at the survey locations; others did not. The survey results indicate that the species may persist at or may have been extirpated from individual survey locations. Research has been conducted, such as radio-telemetry studies on habitat use and movements by Preble's that has added to current knowledge about the species' biology. There is new information verifying differences in morphological characteristics between *Zapus hudsonius preblei* and related taxa (Connor and Shenk, in press).

Information is available on the presence of and possible increases in threats to Preble's and its habitat throughout a large portion of the species' range, as evidenced by—(1) section 7 consultations conducted to address adverse effects to the Preble's from Federal actions and (2) applications by private parties for permits to take Preble's. The Service is in the process of preparing a recovery plan for the Preble's and is involved in section 7 consultations on Federal activities as well as assisting with the development of Habitat Conservation Plans addressing many private activities. Through these efforts, we are continually reviewing and considering all newly available information regarding the species' abundance and the threats it faces.

Finding

The Service has reviewed the petitions, the material submitted with the petitions and subsequent to the petitions, and additional information in the Service's files. On the basis of the best scientific and commercial data available, the Service finds that the petitions and information in the Service's files do not present substantial information that delisting the Preble's meadow jumping mouse in Colorado and Wyoming may be warranted.

References Cited

A complete list of all references cited in this finding is available, upon request, from the Lakewood, Colorado Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 11, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–31255 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for *Deinandra conjugens* (Otay Tarplant)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (''we''), announces the availability of the Draft Recovery Plan for *Deinandra conjugens* (Otay Tarplant) for public review. This draft recovery plan includes specific criteria and measures to be taken in order to effectively recover the species to the point where delisting is warranted. We solicit review and comment from the public and local, State, and Federal agencies on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before March 2, 2004 to receive our consideration.

ADDRESSES: Hard copies of the draft recovery plan will be available in 2 to 4 weeks. An electronic copy of this draft plan is now available at *http://www.pacific.fws.gov/ecoservices/endangered/recovery/default.* Written request for copies of the draft recovery plan and submission of written comments regarding the plan should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009. Supporting documents are available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kelly Goocher, Fish and Wildlife Biologist, at the above Carlsbad address (telephone: 760–431–9440).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Deinandra conjugens is an annual plant in the family Asteraceae. It was federally listed as a threatened species on October 13, 1998 (63 FR 54938). The species occurs in southwest San Diego County, California, and in northern Baja California, Mexico. It occurs predominantly on clay soils, subsoils, or lenses (isolated areas of clay soil), which typically support grasslands, but may support some woody vegetation.

Agriculture and urban development, invasion of nonnative species, and habitat fragmentation and degradation have resulted in the loss of suitable habitat across the species' range. The species' self-incompatible breeding system (an individual plant cannot pollinate itself, so successful reproduction requires pollination between genetically unrelated plants), its annual habit, and the extensive fragmentation of remaining populations potentially create additional threats from random population fluctuations, reduced populations of pollinators, a subsequent reduction in cross pollination and gene flow between populations, and a decline in genetic variation. Maintenance of the genetic variability within the species, through cross-pollination, may be critical to long-term survival.

Within San Diego County, the species occurs entirely within the Multiple Species Conservation Planning (MSCP) area, primarily within three associated subarea plans: the City of San Diego Subarea Plan, the County of San Diego Subarea Plan, and the City of Chula Vista Subarea Plan. These subarea plans provide for the conservation of *Deinandra conjugens* and many other listed and non-listed species by developing a reserve system with a monitoring and management framework, and protecting key populations. Additional measures outlined in the draft recovery plan will enhance the species' ability to achieve recovery.

This draft recovery plan recognizes efforts by the local jurisdictions to conserve *Deinandra conjugens* under the MSCP, and includes additional conservation measures designed to ensure *D. conjugens* will continue to exist, distributed throughout its extant and historic range. Recovery is dependent upon the conservation of sufficient habitat to sustain populations of *D. conjugens,* as well as populations of its primary pollinators; maintaining genetic variability within the species; and connect conserved populations to ensure gene flow (through cross pollination).

The ultimate goal of this recovery plan is to delist *Deinandra conjugens* through implementation of a variety of recovery actions including: (1) stabilizing and protecting habitat supporting known populations within the conserved areas under the MSCP; (2) surveying for new populations; (3) assessing status of known populations; (4) adaptively managing and monitoring conserved areas; (5) identifying research needs and conducting studies on biology and ecology of the species; and (6) developing and implementing a community outreach plan.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 28, 2003.

D. Kenneth McDermond,

Acting Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 03–31164 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for the 'Alalā *(Corvus hawaiiensis)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (''we'') announces the availability of a draft revised recovery plan for the 'Alalā, or Hawaiian Crow (*Corvus hawaiiensis*) for public review. This endemic Hawaiian bird, a member of the family Corvidae, is now believed to be extinct in the wild and survives only in captivity. The 'Alalā was listed as an endangered species in 1967 (32 FR 4001). The original recovery plan for the 'Alalā was published in 1982.

DATES: Comments on the draft revised recovery plan must be received on or before February 17, 2004 to receive our consideration.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850 (telephone 808–792–9400) and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address. An electronic copy of the draft revised recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Jay Nelson, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior

to approval of each new or revised recovery plan. Comments may result in changes to the plan. Comments regarding recovery plan implementation will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The Hawaiian Crow, or ‘Alalā, is an omnivorous, forest-dwelling bird endemic to dry and mesic forests on the island of Hawaii. Although ‘Alalā were still abundant in the 1890’s, their numbers decreased sharply throughout the twentieth century despite legal protection conferred by the Territory of Hawaii in 1931, the Act in 1973, and the State of Hawaii Endangered Species Act in 1982. Progressive range reduction and population fragmentation have characterized the decline. By 1987, the wild ‘Alalā population was reduced to a single bird in north Kona, and an unknown number in central Kona, on the west slope of Mauna Loa volcano, Hawaii. The last reproduction of birds in the wild was in 1996, and the wild population declined from 12 birds in 1992 to 2 birds (possibly 3) in 2002, and apparent extinction in the wild in 2003.

Today, the ‘Alalā is believed to survive only in captivity. Small population size and inbreeding are the primary threats to the species at present, fertility and hatching success in captivity are currently low, and the incidence of congenital abnormalities is increasing.

Many factors contributed to the decline of ‘Alalā in the wild. Destruction of most of the lowland forests restricted the bird’s ability to follow seasonal fruiting up and down the mountains. The upland forests have been thinned and fragmented, and many fruiting plants lost, due to logging, ranching, and the effects of grazing by feral pigs, cattle, and sheep. Mongooses, cats, and rats prey on ‘Alalā eggs and fledglings. Diseases carried by introduced mosquitoes may have cause the mortality of many ‘Alalā, as they did other forest birds. The role of ‘Io in this decline, however, is unknown, despite their known effect on released birds. However, ‘Io densities are higher, and vulnerability of ‘Alalā may be greater, in areas where ungulate grazing has reduced understory cover.

The overall objective of this plan is to provide a framework for the recovery of the ‘Alalā so that its protection under the Act is no longer necessary. Recovery is contingent upon protecting and managing suitable habitat for reintroduction of ‘Alalā. Recovery actions include measures to protect habitat where the taxa occurred and habitat where the species is not known to have occurred but which may be suitable, restoration of degraded habitat, removal of feral ungulates from habitat areas, predator control, captive propagation and reintroduction, development of strategies to reduce mortality of reintroduced ‘Alalā by ‘Io predation, and the development of means to address threats of avian disease. Key to recovery will be propagation of ‘Alalā in captivity; removal of feral ungulates that degrade forest habitat, spread introduced nonnative plant species, and create breeding sites for disease-carrying mosquitoes; control of introduced rodents; removal of feral cats that carry toxoplasmosis; and control of invasive plant species. Habitat management and restoration will increase foods available to released ‘Alalā and provide better cover for escape in areas with ‘Io.

Significant features of the ‘Alalā’s life history, behavior, ecological interactions, and habitat needs remain unknown. These unknowns, combined with the pressing need to successfully maintain and augment the last remaining population of the species in captivity, led us to develop a draft revised recovery plan that focuses primarily on actions to conserve the ‘Alalā in the short-term while working within the framework of a broader long-term recovery strategy. This draft revised recovery plan is therefore presented in three sections: (1) An Introduction and Overview provides information on the biology of the species; (2) a Strategic Plan outlines the overall long-term goals and broad strategies which we anticipate shall remain effective throughout the recovery process for this species; and (3) a 5-year Implementation Plan which sets short-term goals for recovery efforts and research essential to conservation of the species. It is anticipated that new Implementation Plans will be prepared and published as addenda to the revised recovery plan every 3 to 5 years as we gain further knowledge of the ‘Alalā and are better able to determine the parameters and techniques for the effective recovery of this species in the wild.

Public Comments Solicited

We solicit written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered in developing a final revised recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: October 16, 2003.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–31166 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Blackburn’s Sphinx Moth *(Manduca blackburni)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (‘‘we’’) announces the availability of the Draft Recovery Plan for the Blackburn’s Sphinx Moth (*Manduca blackburni*) (sphinx moth) for public review and comment. This insect taxon is listed as endangered (45 FR 4770; February 1, 2000), and is endemic to the main Hawaiian Islands. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on this draft recovery plan must be received on or before February 17, 2004 to receive our consideration.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone: 808–541–3441) and the Hawaii State Library 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: The Field Supervisor at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq*. Recovery means

improvement of the status of listed species to the point at which listing is no longer necessary under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation and survival of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

The sphinx moth was federally listed as endangered on February 1, 2000 (65 FR 4770). This insect taxon is currently known to occur on three of the seven Hawaiian Islands where it historically occurred, including Hawaii, Maui, and Kahoolawe. Although some habitat is under public ownership and zoned for conservation purposes, no known sphinx moth habitat complexes are entirely protected, and the species faces threats throughout its range.

The sphinx moth is currently found in association with topographically diverse landscapes that contain low to moderate levels of nonnative vegetation. Vegetation types that support the sphinx moth include dry to mesic shrub land and forest from sea level to mid-elevations. Soil and climatic conditions, as well as physical factors, affect the suitability of habitat within the species' range. The primary threats to the sphinx moth include urban and agricultural development; invasion by non-native plant species; habitat fragmentation and degradation; increased wildfire frequency; impacts from ungulates; other human-caused disturbances that have resulted in substantial losses of habitat throughout the species' historic range; parasitoids and insect predators; and vandalism (collection). Needed conservation activities include protection, management, and restoration of suitable and restorable habitat; outplanting of native *Nothocestrum* spp. host plants; and a sphinx moth captive breeding program that would augment or expand the existing population within its historic range. This draft recovery plan identifies 3 recovery units, comprising 13 management units, which are geographic areas recently documented to contain sphinx moth populations and/or sphinx moth host plant populations, and shall be the focus of recovery actions or tasks. The three recovery units and their component management units contain habitat considered necessary for the long-term conservation of the sphinx moth (*e.g.*, networks of suitable habitat patches and connecting lands).

The recovery actions described in this draft recovery plan include: (1) Protect habitat and control threats to the moth and its habitat; (2) expand existing wild *Nothocestrum* spp. host plant populations; (3) conduct additional research essential to recovery of the sphinx moth; (4) develop and implement a detailed monitoring plan for the sphinx moth; (5) reestablish wild sphinx moth populations within its historic range; (6) develop and provide information for the public on the sphinx moth; and (7) validate recovery objectives.

The recovery objective of this draft recovery plan is to ensure the species' long-term survival and conservation and to conduct research necessary to refine recovery criteria so that the sphinx moth can be reclassified to threatened and eventually delisted.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final sphinx moth recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 14, 2003.

David J. Wesley,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–31189 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Mississippi River Basin Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Mississippi River Basin Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Mississippi River Basin Regional Panel will meet from 8 a.m. to 5 p.m. on Thursday, January 8, 2004, and 8 a.m. to 4 p.m. on Friday, January 9, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Mississippi River Basin Regional Panel meeting will be held at the Radisson Hotel—New Orleans, 1500 Canal Street, New Orleans, LA 70112. Phone 504–522–4500. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Jay Rendall, Mississippi River Basin Panel Chair and Exotic Species Program Coordinator, Minnesota Department of Natural Resources at (651) 297–1464 or Jerry Rasmussen, Coordinator, MICRA, P.O. Box 774, Bettendorf, IA 52722, at (309) 793–5811, or Shawn Alam, Aquatic Nuisance Species Task Force at (703) 358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Mississippi River Basin Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Mississippi River Basin Regional Panel was established by the ANS Task Force in 2002. The Mississippi River Basin Panel, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Mississippi River Basin,

b. develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. coordinates aquatic nuisance species program activities in the Basin,

d. advises public and private interests on control efforts, and

e. submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Mississippi River Basin region of the United States that includes thirty-two Mississippi River Basin States: Alabama, Arkansas, Colorado, Georgia, Iowa, Illinois, Indiana, Kentucky, Kansas, Louisiana,

Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. The Mississippi River Basin Regional Panel will discuss several topics at this meeting including: a review of the first Panel meeting and Panel efforts to date including the development of an Executive Board report; presentations on round goby predation on smallmouth bass eggs; updates on Asian Carp, bighead and silver carp risk assessments; updates on white perch and distribution of ANS in the Basin; discussions on pathways and prevention activities such as the use of HACCP in fish hatcheries; a report on an Asian carp barrier feasibility study initiated by the Minnesota DNR; development of national ballast water regulations, and state ballast water regulations; status reports from panel subcommittees; a discussion on each subcommittee's responsibilities, the 2004 Action Plans, and recommendations for the ANS Task Force; and updates from Panel member organizations and states.

Dated: December 1, 2003.

William E. Knapp,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–31211 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–PB–24 1A]

OMB Approval Number 1004–0001; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 5, 2003, the BLM published a notice in the **Federal Register** (68 FR 5913) requesting comment on this information collection. The comment period ended on April 7, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0001), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Pleae provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Free Use Application and Permit (Vegetative or Mineral Materials) (43 CFR 3620 and 5510).

OMB Approval Number: 1004–0001.

Bureau Form Number(s): 5510–1.

Abstract: The Bureau of Land Management (BLM) collects information from respondents to monitor and assess the use of authorized removals of vegetative or mineral materials to ensure sustainable resource management.

Frequency: Occasional.

Description of Respondents: Individuals, groups, not for profit organizations, Federal, State, and local governments, or corporations.

Estimated Completion Time: 30 minutes.

Annual Responses: 300.

Application Fee Per Response: 0.

Annual Burden Hours: 150.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 14, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31214 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–PB–24 1A]

OMB Control Number 1004–0058; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 11, 2003, the BLM published a notice in the **Federal Register** (68 FR 6941) requesting comment on this information collection. The comment period ended on April 14, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0058), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA&_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Timber Export Reporting and Substitution Determination (43 CFR 5400).

OMB Control Number: 1004–0058.
Bureau Form Number(s): 5460–17.
Abstract: The Bureau of Land Management (BLM) collects and uses the information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c).
Frequency: Occasional and within 12 months of last export sale.
Description of Respondents: Federal timber purchasers.
Estimated Completion Time: 1 hour.
Annual Responses: 25.
Application Fee Per Response: 0.
Annual Burden Hours: 25.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 24, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31215 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–24 1A]

OMB Approval Number 1004–0073; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 26, 2002, the BLM published a notice in the **Federal Register** (67 FR 48936) requesting comment on this information collection. The comment period ended on September 24, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0073), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;
3. Ways to enhance the quality, utility and clarity of the information we collect; and
4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Coal Management (43 CFR 3400).
OMB Approval Number: 1004–0073.
Bureau Form Number: 3400–12 and 3440–1.
Abstract: The Bureau of Land Management (BLM) collects and uses the information for leasing or developing Federal coal. BLM uses the information to determine if an applicant is qualified to hold a Federal coal lease.
Frequency: Quarterly, monthly, and annually.
Description of Respondents: Individuals, groups, or corporations.
Estimated Completion Time: 10 hours for 3440–1 and 1 hour for 3400–12.

The following chart lists non-form information collection requirements.

Information collection	Public burden HR per action
a. Application for an exploration license	36
b. Issuance and termination of an exploration license	12
c. Operations under and modification of an exploration license	1
d. Collection and submission of data from a exploration license	18
e. Call for coal resource and other information	24
f. Surface owner consultation	1
g. Expression of leasing interest	0
h. Response to notice of sale (bids received)	56
i. Consultation with the Attorney General	4
j. Leasing on application (application received)	308
k. Surface owner consent	1
l. Preference right lease application	800
m. Lease modification	12
n. License to mine	21
o. Relinquishments	18
p. Transfers, assignments, subleases	10
q. Bond actions (by lease or license)	8
r. Land description requirements	2
s. Future interest lease application	8
t. Special leasing qualification	3
u. Qualification statement	3
v. Lease rental and royalty rate reductions	13
w. Lease suspension	20
x. Lease form	1
y. Logical mining units	170
z. General obligations of the operator lessee	1
aa. Exploration plans	30
bb. Resource recovery and protection plan	192
cc. Modifications to the exploration plans and resource recovery and protection plan	16
dd. Mining operations maps	20
ee. Request for payment in lieu of continued operations	22

Information collection	Public burden HR per action
ff. Performance standards for exploration	1
gg. Performance standards for surface and underground coal mines	1
hh. Exploration reports	4
ii. Production reports	10
jj. Notices and orders	3
kk. Enforcement	2

Annual Responses: 1,289. *Application Fee Per Response:*

	Estimated number of actions	Filing fee per action	Total estimated annual collection
(a) Application for an exploration license	10	$250	$2,500
(j) Leasing on application (applications received)	15	250	3,750
(m) Lease modifications	6	250	1,500
(n) License to mine	2	10	20
(p) Transfers, assignments, subleases	27	50	1,350
Total	.....	.....	9,120

Annual Burden Hours: 25,585.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31216 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–393 and 731–TA–829–840 (Final) (Remand)]

Cold-Rolled Steel From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission (Commission) gives notice of the court-ordered remand of its final countervailing duty and antidumping duty investigations Nos. 701–TA–393 and 731–TA–829–840 (Final) (Remand).

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, telephone (202) 205–3095 or Diane Mazur, Office of Investigations, telephone (202) 205–3184, 500 E Street SW., Washington, DC 20436, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening the Record

In March, May, and July of 2000, the Commission made negative final determinations in the referenced investigations. The determinations were appealed to the U.S. Court of International Trade (CIT). On October 28, 2003, the CIT issued an opinion requiring the Commission to reconsider its findings on the applicability of the captive production provision (19 U.S.C. 1677(7)(C)(iv)) and its injury determination. The Commission was instructed to file its findings on remand within 90 days of its order, or on January 26, 2004.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include information bearing on the applicability of the captive production provision. The record in these proceedings will encompass the material from the record of the original investigations and information gathered by Commission staff during the remand proceedings.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings and are parties to the ongoing litigation (*i.e.*, persons listed on the Commission Secretary's service list and parties to *Bethlehem Steel* v. *United States,* Consol. Ct. No. 00–00151) may participate in these remand proceedings.

Nature of the Remand Proceedings

On January 5, 2004, the Commission will make available to parties who participate in the remand proceedings information that has been gathered by the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before January 8, 2004 on whether any new information received affects the Commission's findings as to the applicability of the captive production provision in these investigations. Any material in the comments that does not address this limited issue will be stricken from the record or disregarded. No additional new factual information may be included in such comments. Comments shall be typewritten and submitted in a font no smaller than 11-point (Times new roman) and shall not exceed twelve double-spaced pages (inclusive of any footnotes, tables, graphs, exhibits, appendices, *etc.*).

In addition, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigations must be served on all other parties who may participate in the remand investigations (as identified by either the public of BPI service list), and a certificate of service

must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigations will be released to the referenced parties, as appropriate, under the administrative protective order (APO) in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand investigations.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: December 15, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31272 Filed 12–17–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on December 3, 2003, a proposed consent decree in *United States* v. *Government of Guam,* Civil Case No. 02–00022, was lodged with the United States District Court for the District of Guam.

In this action, the United States sought injunctive relief and civil penalties under section 309 of the Clean Water Act (''CWA'') against the Government of Guam for: (1) Discharges of leachate from the Ordot Landfill without a permit in violation of CWA section 301; and (2) violation of the U.S. Environmental Protection Agency's administrative order to cease the discharges. The consent decree requires the Government of Guam to: (1) Close the Ordot Landfill, conduct environmental studies, and develop, design, construct, and operate a new sanitary landfill; (2) as a supplemental environmental project, develop and implement a comprehensive waste diversion strategy for household hazardous waste on Guam; and (3) pay a civil penalty of $200,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Government of Guam,* D.J. Ref. #90–5–1–1–06658.

The consent decree may be examined at the Office of the United States Attorney, Suite 500, Sirena Plaza, 108 Hernan Cortez, Hagatna, Guam, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthrone Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31152 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on December 3, 2003, a proposed Consent Decree (''Consent Decree'') in *United States* v. *Island Chemical Company,* et al., Civil Action No. 2003–193 was lodged with the United States District Court for the District of the Virgin Islands, Division of St. Criox.

In this action the United States sought the implementation of the remedy set forth in the Record of Decision issued August 13, 2002, and the recovery of costs incurred by the United States in response to releases and threatened releases of hazardous substances at the Site pursuant to sections 106, 107(a) and 113 of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended (''CERCLA''), 42 U.S.C. 9606, 9607(a) and 9613. The Consent Decree, which was lodged concurrently with the filing of the complaint, resolves the United States' claims under the Complaint, recovers $490,000 of unreimbursed past costs, plus future costs, and obligates the Settling Defendants to perform the Remedial Design/Remedial Action (''RD/RA'') at the Site valued at approximately $1.4 million with a contingency groundwater remedy estimated to cost an additional $1 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Island Chemical Company,* et al., D.J. Ref. 90–11–2–954/2.

The Consent Decree may be examined at the Office of the United States Attorney, District of the Virgin Islands, P.O. Box 3239 Christiansted, St. Croix, U.S. Virgin Islands 00822, (contact Assistant United States Attorney Ernest A. Batenga) and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Carol Berns). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $41.50 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31154 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 10, 2003, a proposed Consent Decree in *United States* v. *Ralph L. Lowe,* et al., Civil Action No. H–91–830 was lodged with United States District Court for the Southern District of Texas.

In this action the United States sought all costs incurred by the United States for responding to releases or threatened releases of hazardous substances at the Dixie Oil Processors, Inc. Superfund Site near Friendswood in Harris County, Texas. The Consent Decree resolves the United States claim against Pharmacia Corporation (formerly known as Monsanto Company), the Dow Chemical Company, Merichem Company, Lyondell Chemical Company (as successor to ARCO Chemical Company), and Rohn and Haas Company for past response costs that have been incurred and for future response costs that will be incurred by the United States at the Site. These Defendants have agreed to pay $873,949.80.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ralph L. Lowe,* et al., D.J. Ref. 90–11–2–0323.

The Consent Decree may be examined at the Office of the United States Attorney, 910 Travis Street, Suite 1500, Houston, Texas and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S.Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31153 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Clean Air Act

Notice is hereby given that on December 1, 2003, a proposed Consent Judgment in *United States* v. *The New York City Transit Authority,* Civil Action No. CV–97–7521, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will resolve the United States' claims under section 113 of the Clean Air Act, 42 U.S.C. 7413, on behalf of the U.S. Environmental Protection Agency against defendant New York City Transit Authority (''TA'') in connection with the TA's renovation of six subway stations in Brooklyn and Queens, New York. According to the complaint, asbestos-containing material was improperly removed during the renovation of six subway stations in Brooklyn and Queens, New York. The Consent Judgment requires the TA to pay $300,000 in civil penalties and enjoins the TA from committing violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The New York City Transit Authority,* Civil Action No. CV–97–7521, D.J. Ref. 90–5–2–1–2135.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepoint Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region, II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $3.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31151 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Larry E. Davenport, M.D.: Denial of Application for DEA Registration

I. Background

On September 21, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause (OTSC) to Larry E. Davenport, M.D., (Respondent), proposing to deny his application for a DEA Certificate of Registration. The basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest as that term is used 21 U.S.C. 823(f). More specifically, the OTSC alleged that the Tennessee Department of Health found that in 1998 and 1999, Respondent obtained Schedule II and III controlled substances for the personal use of Respondent and his wife. Respondent obtained the drugs by telephoning in prescriptions using the DEA registration numbers of several different physicians. Sometimes he had his employees do the calling. The OTSC also alleged that Respondent removed controlled substances from the clinic where he was employed, including Emerol, a Schedule II controlled substance.

By letter dated December 10, 2001, Respondent,through his legal counsel, requested a hearing on the issues raised in the OTSC. The matter was placed on the docket of Administrative Law Judge Gail A. Randall. (The ALJ).

The following prehearing procedures, testimony was presented before the ALJ on June 5 and 6, 2002, in Knoxville, Tennessee. The Government presented testimony from three witnesses and had admitted into evidence several exhibits.

Respondent testified on his behalf and also had several exhibits admitted into evidence. After the hearing, both parties submitted Proposed Findings of Fact, conclusions of Law and Argument.

On August 6, 2003, the ALJ certified and transmitted the record to the Acting Deputy Administrator of DEA. The record included, among other thing, the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of act and conclusions of law proposed by all parties, all of the exhibits and affidavits, and the tr4anscript of the hearing sessions.

II. Final Order

The Acting Deputy Administrator does not adopt the Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. The Acting Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings of fact and conclusions of law.

The Government adduced substantial evidence at the hearing that in 1998 and 1999, Respondent was diverting Demerol, a Schedule II controlled substance, for his own use. At the hearing, Pam Runyon-Dean (Ms. Runyon-Dean) testified on behalf of the Government. Ms. Runyon-Dean was a medical assistant at Respondent's clinic, the MediCenter, in Pigeon Forge, Tennessee form May 1995 until January 1999. After completing training to become a medical assistant, she did her externship at the MediCenter.

Ms. Runyon-Dean testified about her observations of the Respondent's diversion of Demerol. As the result of a complaint, the Tennessee Health Related Board (HRB) initiated an investigation of Respondent. Marianne Cheaves, an HRB investigator, met with Ms. Runyon-Dean and another employee of the MediCenter, and suggested that Ms. Runyon-Dean maintain notes of events occuring there. Since Ms. Runyon-Dean already utilized a daily planner, she used it to write her notes, which she then transferred on to lined notebook pages. The notes were later faxed to Investigator Cheaves. Entries were written on the date when incidents occurred.

Ms. Runyon-Dean testified that Demerol and other controlled substances at the MediCenter were stored in a safe in a closet. The dispensing of controlled substances was recorded on a drug log, usually by a medical assistant. There were no other procedure to keep track of controlled substances at the MediCenter.

On September 22, 1998, and again on September 29, 1998, Ms. Runyon-Dean recorded in her log Respondent's requests for tuberculin syringes, which he claimed were necessary to give his daughter allergy shots at home. On October 6, 1998, Ms. Runyon-Dean observed that Respondent's speech ''became more slurred, his eyes were glassy and droopy, he was real groggy and sleepy.'' Ms. Runyon-Dean also wrote that Respondent went to the Pigeon Forge Drugstore and picked up a bottle of Demerol, and later spent ''a lot of time in the restroom.'' On the same day, Ms. Runyon-Dean, who was solely responsible for keeping the employees' restroom clean, noticed several Kleenex tissues in the employee's restroom trash can that had small spots of blood on them.

On the same day, Ms. Runyon-Dean recorded in her log a conversation with another employee, Sherry Linsey. After Ms. Lindsey learned that Ms. Runyon-Dean provided syringes to Respondent, she stated that Respondent's daughter did not receive allergy injections. Ms. Runyon-Dean never witnessed Respondent's daughter receive an allergy shot at the MediCenter and the medical record at the MediCenter for Respondent's daughter did not corroborate any recommendations for allergy shots. At the hearing, Respondent testified that his daughter suffers from allergies and that Ms. Lindsey should not have made the above statements because she doesn't know his daughter's condition. However, Respondents presented no documentary evidence of his daughter's condition.

On October 9, 1998, Ms. Runyon-Dean reported in her log that she went into the employee's restroom after Respondent came out and found blood spots on the commode seat. She had to wipe the spots before she could use the commode. When she threw away her paper towel, Ms. Runyon-Dean saw a wrapper in the trash can from one of the MediCenter's 3cc syringes. It was the only thing she saw in the trash can. Ms. Runyon-Dean testified that the trash can was empty prior to Respondent's use of the restroom that day because she had cleaned the facility that morning. Ms. Runyon-Dean did not notice blood spots prior to Respondent going into the restroom. She also thought it odd to find a 3cc syringe in the employee's restroom because there was no medication in the room and the room was not used to give injections.

On October 11, 1998, Ms. Runyon-Dean again observed that Respondent spent a lot of time in the restroom, and again noticed throughout the day blood spots on Kleenex in the trash can along with blood spots on the commode and sink in the employees' restroom. At the end of the day, she saw Respondent emerge from the employee's restroom and drop a bloody Kleenex into a trash can next to the drug closet.

Respondent testified that the bloody tissues could have been from anybody, including staff or patients. However, Ms. Runyon-Dean testified that aside from these occasions, she never saw blood on the lid of the commode of the employees' restroom and on the occasions where she saw blood, she knew no one had used the restroom other than Respondent. Ms. Runyon-Dean further testified that initially, she would clean the employees' restroom once or twice a day; however, after the change in Respondent's behavior, she would sometimes have to clean the restroom five or six times per day as other employees alerted her that there was blood in the restroom that needed to be cleaned up.

On October 13, 1998, Ms. Runyon-Dean also noted in her log a meeting between Sheri Linsey and Respondent about Demerol that was missing from the drug safe. Respondent told the staff that if the drug was missing, then the drug would no longer be kept in the office. This account was corroborated by Respondent's testimony. Ms. Runyon-Dean noted that the staff agreed with the Respondent's decision to keep the drug out of the office. Ms. Runyon-Dean further noted, however, that the reason the drug was missing was that Ms. Lindsey (unbeknownst to Respondent) had taken the drug out of the safe the previous Friday afternoon and hid it in the front office to keep it from Respondent. Ms. Runyon-Dean testified that Ms. Lindsey told her that she hid the bottle of Demerol from Respondent because she felt that he was taking it for personal use. Ms. Runyon-Dean also noted that after a few days, a bottle of Demerol was back in the drug safe.

On October 19, 1998, Ms. Runyon-Dean noted in her log that Respondent called her in the morning, and his speech was slurred and he would lose his train of thought in the middle of a sentence. Respondent came into the MediCenter later that day, and Ms. Runyon-Dean again noted that Respondent's speech was slurred. Ms. Runyon-Dean also noted that as the day progressed, Respondent became more and more sleepy, groggy and glassy eyed, and his speech became more slurred, to a point where his words were very drawn out.

During his testimony, Respondent disagreed and attributed his demeanor to the lack of sleep. Respondent also testified that he doubted his speech was slurred.

On that same date, Ms. Edna Kimble, a patient of the MediCenter, told Ms. Runyon-Dean that she observed Respondent take a syringe into the employees' restroom, and later return with a bloody Band-Aid on his right arm, holding a bloody Kleenex on it. When Ms. Kimble asked the Respondent why he was bleeding, he informed her that Terry Sutton, an employee of the MediCenter, had drawn Respondent's blood to measure his cholesterol. Ms. Runyon-Dean testified that when she asked Mr. Sutton that day if he had drawn any blood, or tried to draw blood from the Respondent that day, Mr. Sutton stated that he had been too busy and had not drawn Respondent's or anyone else's blood on that day. Later that day, Ms. Runyon-Dean emptied the trash can in the employees' restroom and found several bloodied Kleenex along with two empty packages of generic Halcion. Ms. Runyon-Dean also saw a Band Aid on Respondent's arm.

During his testimony, the Respondent again attributed the blood on his arm to the ''one time'' that his employee, Terry Sutton, attempted to draw Respondent's blood. Respondent claimed that Mr. Sutton got a ''flashback'' (''pierced the vein''). Respondent failed to explain, however, why Mr. Sutton denied drawing Respondent's blood, and did not continue the blood drawing procedure at another location on the vein or on another vein after he had gotten the flashback. When Ms. Runyon-Dean asked Mr. Sutton whether he had drawn blood that day from Respondent, Mr. Sutton did not mention to Ms. Runyon-Dean that there had been any ''flashback'' in an attempt to draw blood from Respondent.

Ms. Runyon-Dean further testified that anytime MediCenter staff drew blood from someone, requisitions for the lab are filled out. On October 19, 1998, there were no requisitions for lab worked filled out on the Respondent. At the hearing, Respondent contested Ms. Runyon-Dean's account, stating that she never asked Terry Sutton about drawing blood, and that in any event ''* * * it's none of her business when I draw blood and when I don't draw blood.''

In her log entry for October 20, 1998, Ms. Runyon-Dean noted her observations of Respondent entering the MediClinic that morning and proceeding straight to the drug closet. She then realized that he had gone into the drug safe where the Demerol and other controlled substances were kept, because she heard the bottles jingling. She then observed Respondent go into the employees' restroom. Ms. Runyon-Dean immediately asked Julie Bowman, an office employee, to check the drug safe. Upon inspection, the Demerol was missing. Ms. Runyon-Dean testified that she, along with Ms. Bowman and another office employee, noted that the Demerol was present in the safe prior to Respondent going into the safe. About 20 minutes later, after Respondent had emerged from the restroom, the MediCenter staff noticed that the bottle of Demerol had been returned to the drug safe. Ms. Runyon-Dean testified that periodically during that day, the bottle of Demerol was missing and those times corresponded to Respondent's visits to the employees' restroom. By the end of the day, the bottle of Demerol had disappeared and was never returned to the safe.

In addition to testifying that blood spots on his shirt were attributed to a ''flashback'' brought about as a result of blood being drawn by an employee, Respondent further testified that blood would also ''spray back'' on him from lancing wounds and the like. Respondent also testified that blood found in the employees' restroom was form employees going there to wash off blood if it got splattered.

Ms. Runyon-Dean noted in her log that on October 20, 1998, Respondent's shirt sleeves were rolled up to the elbows, and there were blood spots on his ''left arm sleeve.'' She further testified during the hearing that Respondent had blood stains on his t-shirt underneath his scrubs. On one occasion, Respondent was observed with a syringe sticking out of the top of his left back pocket. On that same date, MediCenter staff witnessed Ms. Runyon-Dean empty the trash in the employees' restroom. The contents of the trash revealed several wads of wet paper towels with blood on them along with two ''very bloody'' Band Aids.

On October 2, 1998, Respondent was not in the MediCenter and the Demerol was missing from the drug safe. Respondent called later and told Ms. Lindsey that he had taken the Demerol and emptied it out because he did not want to keep it in the office anymore. He then told Ms. Lindsey that he had changed his mind and asked her to get a new bottle of Demerol from the pharmacy.

HRB Inspector Cheaves also testified about the MediCenter's handling of Demerol. She first performed an audit of the Demerol purchased by the clinic for a period of approximately one year. It showed that the clinic had received 14,000 milligrams of Demerol during the period. She then calculated how much Demerol had been dispensed to the clinic's patients during that time. The audit showed that 10,100 milligrams were not accounted for.

Thus, there is substantial evidence to conclude that Respondent abused Demerol in 1998 and 1999, and at the hearing, Respondent provided very little evidence to rebut this conclusion. The large amount of Demerol unaccounted for in Ms. Cheave's audit, Respondent's seemingly drugged behavior on certain days, his frequent forays into the employees' restroom, leaving behind syringes, bloody band aids, tissues and blood on the commode, the disappearance and reappearance of the Demerol bottle in the drug safe corresponding to Respondent's visits to the restroom, Respondent's untruths about having his blood drawn and the prescription for Demerol syrup (*see infra*) together constitute ample evidence that Respondent diverted a substantial amount of Demerol for his own use.

The Government also adduced plentiful evidence that from 1995 until 1998, Respondent was calling in prescriptions, or having his employees call in prescriptions, for Respondent and his family, using the names of other doctors at the MediCenter. The Government produced a copy of an Agreed Order entered into by Respondent and the Tennessee Department of Health (the Department) in January 2001. In the Agreed Order, Respondent agreed that he had issued 41 prescriptions for controlled substances for his wife and himself under the names of other physicians. The Agreed Order was signed by Respondent on January 21, 2001. The controlled substances included Halcion, Ambien, Hydrocodone and Lorcet. The Department suspended Respondent's medical license for three months and levied a fine, followed by a two-year period of probation.

The evidence presented by the Government at the hearing confirmed Respondent's misconduct. Ms. Runyon-Dean testified that she had heard Respondent call in prescriptions for himself and his family members, requesting that the prescriptions be issued under the names of other doctors at the MediCenter. Two pharmacists told the HRB investigator that Respondent had called in prescriptions for himself and his wife and had asked that the prescriptions be issued in another physician's name. The pharmacists knew that Respondent was on the phone because they recognized his voice. Ms. Runyon-Dean testified that when some of the physicians at the

MediCenter found out that their names had been used on prescriptions that they had not issued, became upset about it.

From October 13, 1998, through the middle of the year 2000, HRB investigators conducted interviews of past and present employees of the MediCenter, including nine physicians. The physicians interviewed were shown pharmacy printouts and original prescriptions for controlled substances purportedly issued in their names for Respondent and his wife. The physicians were asked to review and verify the prescriptions in question. All but two of the physicians confirmed that they had not authorized the prescriptions attributed to them. One physician was unsure whether he had authorized the prescriptions. One of the physicians told the investigator that when he later confronted Respondent about the prescriptions issued in his name (to which Respondent admitted), the Respondent replied ''that's what partners do.''

One physician, Dr. Underwood, confirmed that he had approved a prescription for Respondent's wife. The doctor explained that he issued a prescription for Lorcet, a Schedule III controlled substance, to Respondent's wife, because Respondent had told him that his wife was experiencing painful periods. The physician admitted, however, that he had never seen Respondent's wife.

In a later interview, Dr. Underwood further explained that on or about February 5, 1999, he received a telephone call from the Respondent and was advised that the Respondent had called in another prescription for his wife, apparently using Dr. Underwood's name and DEA registration number. In a February 17, 1999, written statement, Dr. Underwood stated: ''Without my knowledge or permission, neither express or implied, [Respondent] apparently, called in a prescription of a pain medicine, as well as, anaprox ds and a sedative for insomnia using my name and DEA number * * * [h]e did not tell me the date that he called in the prescription, nor the pharmacy that he called.''

At the hearing, Respondent denied that he had ever called in a prescription using another doctor's name without first obtaining the physician's permission. He contended that he, or one of his employees, had asked the doctors to call in the prescriptions for him, and that this was run of the mill practice at the clinic. Respondent claimed that the doctors must have forgotten to annotate the patient charts, and were now lying to protect themselves.

The Government also presented the testimony of DEA Diversion Investigator (D/I) Rhonda Phillips. Investigator Phillips has been a Diversion Investigator with the DEA Nashville Office for fourteen years. She testified that Respondent came to the attention of DEA in 1999, when the HRB requested assistance in its investigation of Respondent. In the course of its investigation, DEA received a copy of a report prepared by the Federal Bureau of Investigation (FBI). The initial target of the FBI investigation was a chiropractor, however, Dr. Underwood was interviewed as part of that investigation. Dr. Underwood stated in the report that Respondent posed as him in calling in a Vicodin prescription for Respondent's wife around January 1999. According to Dr. Underwood, Respondent apparently became concerned about being caught, and told Dr. Underwood, in effect, that ''We have to do something.'' Respondent then requested that Dr. Underwood postdate a patient chart for his wife to make it appear that the earlier prescription was medically necessary. Dr. Underwood refused to take such action. At the hearing, Respondent denied asking Dr. Underwood to cover up the prescription, claiming that Dr. Underwood was lying in order to protect himself.

There was also evidence that Respondent issued prescriptions in his own name for his own use. On March 22, 2001, DEA personnel interviewed Clark M. Kent, former registered pharmacist for Drugs For Less #2121 in Halls, Tennessee. Mr. Kent stated that Respondent would come into the pharmacy and write hydrocodone prescriptions in the names of other individuals and take the controlled substances with him. Mr. Kent further recalled a conversation where Respondent asked Mr. Kent if he would fill a call-in prescription that was issued under Dr. O'Shaughnessy's name. Mr. Kent stated that he declined Respondent's request because it violated federal and state regulations. Mr. Kent also informed investigators that Respondent called in a prescription for Demerol syrup for the latter's son. Mr. Kent found the prescription unusual since that type of medication was not ordinary for a young individual. During the hearing, Respondent denied that he had called in a prescription for Demerol syrup for his son.

The Government also presented evidence concerning Respondent's issuance of controlled substance prescriptions after his DEA registration expired in July 1998. In the Agreed Order, Respondent agreed that he had issued prescriptions for controlled substances after the expiration of his DEA registration.

At the hearing, Respondent admitted that he had issued prescriptions for controlled substances after his DEA registration had expired, blaming it on his own negligence. He claimed that he wrote the prescriptions not realizing that his registration had expired. The Government presented evidence, however, that Respondent continued to issue several prescriptions for controlled substances after he learned of the expiration of his registration. The evidence showed that Respondent learned about the expiration of his registration in late 1998. Respondent testified that he stopped writing prescriptions after he learned of the expiration of his DEA registration and instructed his staff not to refill or call in any prescriptions using his name. Nevertheless, Investigator Cheaves obtained a prescription profile from the Medicine Shoppe in Knoxville, Tennessee showing that on January 7, 1999, after Respondent learned that his DEA registration had expired, a prescription for Valium was filled for patient Hugh Ray Wilson under Respondent's expired DEA registration number, and two prescriptions for Ambien for Mr. Wilson were refilled under that registration number on January 26 and April 7, 1999.

On January 23, 1999, a prescription was filed for Clorazepate Dipotassium (a Schedule IV controlled substance); on February 10, 1999, a prescription was filled for Guaituss DAC Syrup (a Schedule V controlled substance); on May 26, 2000,[1] a prescription was filled for Lomitil liquid (diphenoxylate hydrochloride and atropine sulfate (a Schedule V controlled substance). With respect to the Lomitil prescription, Respondent admitted calling it in, but added that he didn't know the drug was a controlled substance. Respondent later added that someone from his staff may have called in the prescription.

Based upon the above, the Acting Deputy Administrator finds that Respondent diverted substantial amounts of Demerol for his own use; failed to comply with DEA regulations to account for controlled substances at his place of business; called in or caused to be called in controlled substance prescriptions for himself and his wife using other physicians' names; and negligently issued prescriptions for

[1] This prescription was also authorized following Respondent's submission of his January 3, 2000 application for DEA registration.

controlled substances after his DEA registration had expired.

The Acting Deputy Administrator will now consider the factors used by DEA to determine the public interest. Under 21 U.S.C. 823(f), the Attorney General shall register a practitioner to handle controlled substances unless the Attorney General determines that the registration of the applicant is inconsistent with public interest.[2] In determining the public interest, the Acting Deputy Administrator shall consider:

1. Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

2. Compliance by the applicant with applicable Federal, State, and local laws;

3. Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or the chemicals controlled under Federal or State law;

4. Any past experience of the applicant in the manufacture and distribution of chemicals, and

5. Such other factors as are relevant to and consistent with the public health and safety.

Consideration of the first factor weights heavily against Respondent. Respondent could not account for a large amount of Demerol that had been purchased by the MediCenter. Respondent never audited his supplies of controlled substances and at the hearing testified that he was not even aware of the existence of the Code of Federal Regulations.

With regard to the second factor, there was substantial evidence that Respondent failed to comply with Federal, State and local law. His diversion of Demerol for his own use violated 21 U.S.C. 841(a). His failure to conduct audits of the controlled substances in his place of business violated 21 U.S.C. 827. Respondent's issuance of prescriptions to himself and his wife under other doctors' names violated 21 U.S.C. 841(a) and 21 CFR 1306.04 and 1306.05.

As for the third factor, there is no evidence that Respondent had any prior convictions related to controlled substances. The fourth factor is not relevant to these proceedings.

With regard to the fifth factor, many considerations weigh heavily against providing Respondent with a DEA Certificate of Registration. Respondent's misconduct is extremely alarming. The diversion of Demerol for his own use and his long-term issuance of prescriptions for controlled substances in other physicians' names are particularly disturbing. Moreover, even in the face of overwhelming evidence of his misconduct, Respondent has failed to admit to any intentional misconduct whatsoever. Respondent's appalling misconduct and his continued denials about his misuse of controlled substances show that he has failed to recognize the gravity of his actions and that it would not be in the public interest to permit him to handle controlled substances. Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby finds that the performance of the evidence establishes that the registration of Respondent as a practitioner would be inconsistent with the public interest.

Therefore the Acting Deputy Administrator hereby orders that Respondent's application for a DEA Certificate of Registration and any requests for renewal or modification submitted by Respondent be, and hereby are, denied.

Dated: November 26, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–31218 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–09–M

[2] This function has been redelegated to the Acting Deputy Administrator of DEA.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–22]

OTC Distribution Company; Revocation of Registration

On May 9, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to OTC Distribution Company (''OTC'') as to why the OTC's DEA Certificate of Registration as a distributor of List I chemical products should not be revoked as being inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The Order to Show Cause alleged that: (1) OTC (Respondent) had failed to comply with the terms and conditions agreed to in a Memorandum of Agreement (MOA) with the DEA, including the requirements: To abide by all laws relative to listed chemicals, to report all sales and purchases to DEA monthly, to prepare quarterly inventories, to contact the DEA field office regarding questions about potential customers and to institute effective control and procedures against diversion; (2) multiple bottles of OTC pseudoephedrine were seized from an illicit manufacturing lab in Oregon; (3) OTC failed to report an uncommon method of payment as required by 21 CFR 1310.05(a); (4) OTC shipped listed chemicals to an unregistered location in violation of the MOA; (5) an audit of OTC's purchase orders and sales invoices revealed a failure to comply with the regulatory requirements of 21 CFR 1310.06(a); (6) the audit also revealed that OTC was unable to account for approximately 415,000 bottles of pseudoephedrine as a result of a failure to maintain complete and accurate records; and (7) the monthly sales spreadsheets OTC provided to the DEA underreported the company's actual total pseudoephedrine sales by more than 200,000 bottles.

By letter dated June 6, 2000, Respondent, by counsel, filed a request for a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall. On July 17, 2000, the Administrator of the DEA issued an Order of Immediate Suspension of Registration based on the fact that: (1) After the Order to Show Cause was issued, a second audit of OTC's inventory and records revealed a shortage of over 10,000 bottles of pseudoephedrine; and (2) subsequent to the issuance of the Order to Show Cause, the DEA sent four warning letters to the Respondent, alleging that OTC's pseudoephedrine products had been found at various sites related to the illegal manufacturing of methamphetamine.

Following prehearing procedures, a hearing was held in Arlington, Virginia on September 5–6, 2000, and in Dallas, Texas on November 15–17 and December 5–7, 2000, and on May 8, 2001. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument. On August 8, 2002, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's DEA registration be revoked. Both parties filed exceptions to the Opinion and Recommended Ruling and on September 27, 2002, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. Except as specifically noted, the Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or any failure to mention a matter of fact or law.

Pseudoephedrine is a List I chemical used as a precursor in the clandestine production of methamphetamine. Most clandestine laboratory operators use a variety of methods to conceal their purchases of precursor chemicals and equipment from law enforcement and firms distributing such chemicals and goods are required to carefully scrutinize their sales transactions to prevent the unauthorized purchase and use of such goods. Pseudoephedrine is lawfully marketed in the United States for use as a decongestant in 30 or 60 mg. tablets and the maximum recommended adult daily dose is four 60 mg. tablets per day, amounting to 120 tablets per month. Ephedrine, also a List I chemical which may be used as a precursor in the clandestine manufacture of methamphetamine, is marketed for use as a bronchodilator for asthma and may be used as a topical decongestant.

From 1994 until 1999, DEA clandestine laboratory seizures rose from 263 to 2,025 and in 1999, the national total for all State, local and Federal agencies was 6,835. During an eight-month period in 2000, DEA reported over 3,000 clandestine laboratory seizures. The overwhelming majority of these laboratories were associated with the clandestine manufacture of methamphetamine. Methamphetamine has a high abuse potential and adverse impact on public health. Dependency is the primary motivation for methamphetamine use and between 1993 and 1998, 3,903 methamphetamine-related deaths were reported in the Drug Abuse Warning Network for the Primary Metropolitan and Statistical Areas of San Diego, Los Angeles, San Francisco and Phoenix.

Pseudoephedrine bulk powder is usually imported from China or India, tableted by DEA-registered manufacturers, distributed to various distributors, wholesalers and then to retail outlets. Of DEA's approximately 3,500 chemical registrants in 2000, over 3,100 were distributors. While illegal diversion can occur at any point in the distribution chain, it usually occurs after the manufacturer has sold its product to a distributor.

OTC'c chemical background originated from the business operations of L&M Vending company (L&M Vending), OTC's predecessor entity. On April 30, 1997, Larry Petit filed for a DEA Registration on behalf of L&M Vending. Subsequently, Tim Petit, brother of Larry Petit, filed an Assumed Name Record and Copy Request with the Earl Bullock County Clerk's Office, asserting ownership for the unincorporated business, L&M Vending. Articles of Incorporation for L&M Vending were later issued by the Office of Secretary of State of Texas, naming ''Larry Petit,'' ''Mitzi Petit,'' and ''Timmy Petit'' as initial directors of the corporation. Larry Petit was designated the initiated Registered Agent for L&M Vending.

By letter of November 15, 1999, OTC informed the DEA that, effective August 1, 1999, L&M. Vending no longer sold List I chemical products, L&M Vending surrendered its DEA Certificate of Registration and transferred to OTC, via invoice, all of its inventory of products containing List I chemicals. Larry Petit, who had performed confidential informant work for DEA in which L&M Vending was used, testified at the hearing that OTC was formed in order to shift legitimate List I chemical products sales away from L&M Vending's informant operations. Due to policy changes within the agency, DEA discontinued using Larry Petit applied as a cooperating source in September of 1997. In May of 2001, L&M Vending was still in business, supplying novelty merchandise to convenience stores.

Larry Petit testified during the hearing in this matter that Tim Petit was the owner of L&M Vending and OTC. However, on June 30, 2000, after these proceedings began, OTC filed Articles of Incorporation with the Texas Secretary of State, listing Larry Petit, Mitzi Petit and Timmy Petit as directors of the corporation. On May 5, 1999, Tom Petit applied for a DEA Registration for OTC to distribute List I chemical products. In connection with OTC's May 5, 1999, application for a DEA Registration, on July 30, 1999, DEA and Larry Petit (on behalf of OTC), entered into a Memorandum of Agreement (''MOA''). In the MOA DEA promised to grant OTC a Certificate of Registration for chemical code numbers 8112 (pseudoephedrine), 8113 (ephedrine) and 1225 (phenylpropanolamine), in exchange for Respondent's compliance with requirements beyond those stated in Federal, State and local law. Generally, the Respondent agreed to maintain complete records, review each sale for any suspicious transaction, identify its customers and promptly notify DEA in the event of a change in business or ownership.

A DEA registration was issued to OTC on or about July 30, 1999, and was scheduled to expire December 31, 2000, if no renewal application was filed. OTC was thus authorized to distribute List I chemical products while its registration was valid, until July 17, 2000, when the Administrator entered his Order of Immediate Suspension of Registration.

On December 22, 2000, Tim Petit filed a renewal application for DEA registration. The application was ''OTC Distribution.Co.'' typed in as the registrant's name. However, handwritten below that entry was ''OTC Distribution Inc.'' Additionally, in the explanation section of the application, the words ''Temporary (sic.) Suspended'' were handwritten. Tim Petit signed the renewal application, designating himself as ''President-Owner'' of the business. On August 31, 2000, OTC filed a Designation of Representatives and Power of Attorney (Designation), pursuant to 21 CFR 1316.50. The Designation, executed by Tim Petit, appointed Larry Petit ''as representative of the sole proprietorship and/or Corporation, *nunc pro tunc* to July 7, 1999 (for the proprietorship) and June 30, 2000 (for the Corporation), to represent either or both with regard to matters within DEA's jurisdiction.'' While Larry Petit provided testimony on behalf of the Respondent, Tim Petit did not appear or testify at the hearing.

Both L&M Vending, Inc. and OTC conducted business through ''800'' numbers on vehicle cell phones. L&M Vending is not listed in the Dallas area telephone directory. Larry Petit testified at the hearing that he did not know whether or not OTC was listed in the telephone directory. Testimony at the hearing also established that OTC had never had a marketing plan, never advertised, had promotions, nor provided point-of-sale advertising. Larry Petit did not know the number of pseudoephedrine tablets sold in 2000, had not assessed the total market for that product, was unaware of his market share for that product and did not have a product catalogue or price list.

In the Memorandum of Agreement which OTC entered into with DEA in 1999 in order to become registered, the company agreed to maintain records of receipt, distribution and returns of each transaction of listed chemical products, even if the transaction was not a regulated transaction. These records were to include information as to the purchaser's identity, date of transaction, full description of the product and

method of transfer and the method of payment. Receipt and distribution records were to be maintained at the registered location or at Larry Petit's daughter-in-law's, Tita Petit's, office, be readily retrievable and maintained for two (2) years after the transaction. Distribution of all List I chemical products were to be made under the name OTC.

Larry Petit further agreed to mail photocopies of receipt and distribution records of listed chemical products to DEA on a monthly basis and submit monthly reports to DEA of mail order sales of listed chemical products. OTC was not in compliance with the MOA because OTC failed to regularly provide the requisite purchase records to DEA for its listed chemical products. OTC also failed to provide DEA with monthly purchase records, although it did provide monthly sales records. Both were required by the MOA.

Respondent also agreed in the MOA that Larry Petit would personally review each sale by OTC of listed chemical products for suspicious orders, any and all of which were to be promptly reported to DEA. Although not required of List I chemical distributors by law, under the MOA, Respondent was obligated to take quarterly inventories of its List I chemical products, which would include the List I chemical's name, strength, form of packaging, amount in stock, date of inventory and a witnessed signature of the person taking the inventory.

OTC was also required to keep two forms of identification on file for all customers and maintain a separate file on each customer purchasing List I chemical products. For retail customers, the file should include a copy of the customer's business license and photographs of the establishment bearing the company name. If the company was a DEA registrant, that status was to be verified with the DEA Dallas Field Division. OTC was also to ensure the ''ship to'' address of retail customers matched the addresses on business licenses maintained in the customer files.

OTC's List I chemical products were to be received and stored only at 12617 Gaslite Drive, Dallas, Texas and DEA approval was required before OTC could use any other storage facility. OTC also agreed to provide advance notification to the Dallas Field Division of any planned ownership change in OTC and promptly notify DEA if OTC Distribution Co. discontinued business.

During a pre-registration investigation of Respondent's premises conducted July 28, 1999, DEA Investigators reviewed the terms of the proposed MOA point by point with Larry Petit, who was permitted to ask questions and make comments on the terms of the agreement. Larry Petit did suggest some changes and DEA agreed to allow OTC's books to be kept at Tita Petit's residence, separate from OTC's registered location. Larry Petit was advised that he would have to very carefully and fully identify OTC's customers and comply with regulations stipulated in the Code of Federal Regulations. Copies of regulations and warning sheets, advising the DEA had seized combination ephedrine and pseudoephedrine at clandestine methamphetamine laboratories, were also provided. Larry Petit was instructed that OTC should have a photocopy of customer's applications or DEA licenses or of photographic identification or driver's licenses and should physically verify that the company existed.

The Acting Deputy Administrator agrees with the Administrative Law Judge that this MOA is a valid and binding agreement between DEA and Respondent.

On March 30, 2000, DEA Diversion Investigators went to Tita Petit's residence. Since August 1999, Tina Petit had worked for OTC, assisting Larry Petit in keeping the company's List I chemical product records, and the records were maintained at her residence. The Diversion Investigators asked for OTC's purchase and sales records, and Tita Petit produced hardcopy sale and purchase invoices which she confirmed were ''all the records.'' The records were found to be incomplete in that they did not indicate when and if a product was actually received. Tita Petit indicated she and Larry Petit were trying to ''work out the problem'' and at that time there was no real way to tell when a shipment had been received. During this period they were working with OTC's main supplier of List I chemical products, OTC Brokerage, Inc. (''OTCB''), to match up invoices. In a May 10, 2000, letter to DEA, Larry Petit indicated OTCB had not provided OTC with complete purchase records.

The Diversion Investigators attempted to conduct an audit of the company's List I chemical products. The audit covered the period July 30, 1999, to March 30, 2000. In addition to the incomplete receiving records, the Diversion Investigators found inconsistencies in the sales records. The Investigators went to some of OTC's suppliers in an attempt to determine exactly how much product was received by OTC during the audit period. They were not able to obtain all the information they needed. The audit disclosed shortages of several products including thousands of bottles of pseudoephedrine.

Diversion Investigators conducted another inspection on May 23, 2000. They inventoried approximately 1,500 bottles of List I chemical products on hand, a figure Larry Petit certified. Using Respondent's list of sales of the month of May 2000 and purchase and sales documents from OTC, and two of its suppliers for that month, DEA personnel determined that for the month of May 2000, OTC had additional shortages of 10,589 bottles of List I chemical products.

The Administrative Law Judge found that as a chemical registrant, OTC had an obligation to maintain records regarding List I chemical products and to keep purchasing records and sales records. Further, pursuant to paragraph 7 of the MOA, OTC was required to keep an inventory of all List I chemicals on a quarterly basis. Pursuant to the MOA, OTC was also required to keep sales invoices. The sales invoices DEA obtained March 30, 1999, were retained pursuant to that requirement, but those records were incomplete. More than half of the 179 invoices (98) did not denote the method of transfer, which should be recorded in accordance with DEA regulations. The MOA also required recordation of the method of payment, yet approximately 56 or 57 of the total invoices reviewed failed to note method of payment.

In the months following its pre-registration inspection, OTC provided DEA with sales records in accordance with the MOA, but not the required purchase records. The purchase records were, however, promptly produced in January or February 2000 after they were requested.

Between July 1999 and February 2000, Koehn Enterprises of Texarkana, Texas purchased 600 cases of pseudoephedrine product from OTC. On February 15, 2000, a DEA Diversion Investigator went to the location that OTC shipped to and found Koehn's registered location to be a day care center and that its List I chemical products were being stored at another unregistered address. Koehn also had been arrested on state charges for unlawful transfer of precursor chemicals. DEA was advised that Koehn made many shipments of List I chemicals to Las Vegas, Nevada to customers taken over from OTC. Koehn was unable to account for 97 cases of pseudoephedrine which it had received from OTC.

OTC was also receiving, processing and distributing orders containing List I chemical products at the AIT Freight

facility. When an air shipment came into AIT, OTC's salesman would come to the facility and break down the shipment into orders. While some would be given to AIT for re-shipment, others would be given by OTC's salesman to customers who came to AIT's dock. On May 12, 2000, the salesman was seen supervising the loading of apparent pseudoephedrine product into a rental truck, which then left the area. Thus it appeared that OTC was shipping or distributing List I chemicals from an unregistered location.

From April to June 2000, Respondent kept an organized chart of pseudoephedrine product activity. This chart included: Detailed information as to customers' identity and addresses, DEA registration numbers, dates of request, invoice numbers, types of carrier used to deliver the product, quantities of product sold, any amounts returned, OTC purchase order numbers, the customers' purchase order numbers, specific product information and the payment numbers.

With regard to customer compliance, OTC sent a packet of information to its customers containing information about reporting suspicious orders, complying with DEA regulations and restricting terms of resale. It also sent a contract to retailers selling OTC products which required implementing and educating store employees on a ''maximum purchase policy'' and compliance with all DEA regulations. OTC also sent a conditions of sales contract to its distributor customers, explaining its requirements for resale of pseudoephedrine and ephedrine products. A suspicious orders guide sheet was also provided both retail and distributor customers, enumerating a list of suspicious factors found in the DEA's Chemical Handler's Manual. It also explained that distributors, who were most familiar with their customers and circumstances, must use their best judgment in identifying suspicious orders. Govt. Ex. 11 at 5. With regard to OTC's customer files, most contained photographs of their facilities and photocopies of their representative's driver's license.

OTC reported suspicious transactions to DEA by letter five times between November 18, 1999, and June 22, 2000. Its predecessor, L&M Vending, also reported suspicious transactions by letter on five occasions between March and July 1999.

DEA has implemented a system of documenting and informing a company that products it has manufactured or distributed have surfaced at a site associated with clandestine drug manufacturing. Fourteen DEA Warning Letters were addressed to Respondent between January 6, 1999, and October 18, 2000, enumerating over 20 different seizures of OTC's pseudoephedrine product at clandestine sites. These letters documented the seizure of 28,423 bottles of 60-count List I chemical product, 116 bottles of 100-count List I chemical product and 32,589 bottles of 120-count List I chemical products. During the period November 1999 to July 2000, OTC pseudoephedrine product was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.

OTC sold List I chemical products to Tobacco Wholesale. Sales increased from 110 cases in February 2000 to over 800 cases by May 2000. Larry Petit thought this was appropriate, as that firm would become OTC's regional distributor in Oklahoma. He also testified he had an agreement with another List I chemical wholesaler, Branex to be OTC's regional distributor in Florida. However, this was not a written agreement, but one orally negotiated by OTC's salesman. Petit was unaware if OTC had a special price agreement with Branex, whether he had assessed Branex's ability to compete in the Florida pseudoephedrine market or if Branex had been asked to provide OTC a list of its retail customers.

There were instances when Larry Petit also did not check on the trade references supplied by customers or know if anyone from OTC had checked on their downstream customers. Petit also admitted that he ignored references supplied by customers even though he referred to the reference as a ''bad guy.''

In the traditional market, Pfizer is the manufacturer and distributor of the Sudafed product line and one of the largest sellers of pseudoephedrine products in the United States. Pfizer's major customers include retail trade outlets such as drug and grocery store chains and mass merchandisers. From August 1999 to April 2000, OTC sold almost one-third the number of pseudoephedrine products sold by Pfizer nationwide. Pfizer's representative was not aware of OTC as a competitor and concluded OTC's brand was not sold in the same market as Sudafed.

The L. Perrigo Company is the largest manufacturer of over-the-counter pharmaceutical products for the ''store brand'' market, which are sold under various labels and compete with nationally advertised brands. From August 1999 until April 2000, OTC sold over one-third the number of tablets of pseudoephedrine product sold by Perrigo. Perrigo's representative had never seen or heard of the OTC's product and concluded it was neither a national brand nor a competitor of Perrigo's.

During the hearing and in post-hearing filings, the Government asserted that Respondent's registration should be revoked on public interest grounds. It argued that OTC failed to maintain effective controls against diversion, that the MOA bound OTC to additional requirements with which OTC failed to comply and that OTC failed to take corrective action after being notified of possible diversion of its product. The Government also contends OTC failed to comply with relevant Federal, State and local law by failing to report a regulated transaction which included a suspicious method of payment to DEA, failure to identify the other party to a regulated transaction, failure to keep and maintain records of regulated transactions and failure to keep and maintain accurate inventory records.

The Government contends OTC's principal manager was aware of DEA regulatory requirements and knew, through DEA Warning Letters, that its pseudoephedrine product was being diverted to the illicit production of methamphetamine. The Government further argues OTC was not providing listed chemical products for the traditional and recognized therapeutic market.

Respondent contends it substantially satisfied its regulatory obligations, entered into a voluntary agreement imposing additional responsibilities, substantially followed those obligations and attempted to consult with DEA to improve its operations. It further points to Larry Petit's extensive work with the DEA. While acknowledging violation of the record-reporting provision of the MOA when it failed to provide purchase orders to DEA, it argues this violation does not justify revocation, given OTC's remedial efforts to rectify that error.

Pursuant to 21 U.S.C. 823(h) and 824(a)(4), the Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal for such registration, if she determines that registrant's continued registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels.

(2) Compliance by the applicant with applicable Federal, State and local law.

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law.

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

These factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

As a preliminary matter, the Administrative Law Judge refused the Government's request to take official notice that ''no business entity, intended to be a going concern, operates in such a fashion as OTC did.'' The Acting Deputy Administrator agrees that the broad assertion of OTC's illegitimacy as an on-going business entity embodied in this particular request is not appropriate for official notice. However, the Acting Deputy Administrator disagrees with the Administrative Law Judge's broad conclusion that DEA possesses ''no specialized knowledge pertaining to general business practices of legitimate business entities'' (ALJ Decision at 47). The DEA does possess special expertise in many areas of business operations, both legitimate and illegitimate, which relate to the manufacture and distribution of controlled substances and List I chemicals.

Nevertheless, deciding whether or not ''any'' business entity, intending to be an ongoing concern, would operate as OTC did, does require a qualitative analysis of the evidence in the particular record on a finding which could materially impact the outcome. The request also does not involve an ''obvious and notorious'' fact (*See* Attorney General's Manual at 79), is open to dispute and is not capable of ready and certain verification. Considering the foregoing and the scope of the request, the Acting Deputy Administrator will not take official notice of the specific fact which was requested.

Nevertheless, certain facts established in the record do indicate numerous deviations from what would be considered sound business practices of companies engaged in distributing regulated chemicals. As did the Administrative Law Judge, these facts will be considered by the Acting Deputy Administrator in determining the public interest in OTC's continued registration.

The Acting Deputy Administrator also agrees with the Administrative Law Judge that OTC Distribution Company's Certificate of Registration was not terminated as a matter of law when, after initiation of these proceedings, Tim Petit filed Articles of Incorporation with the State of Texas in the name of ''OTC Distribution, Inc.'' Ambiguity as to the Respondent's intent to alter its status as a sole proprietorship to that of corporation and to use a renewed certificate to carry out its business, was generated by conflicting notations on the December 22, 2000, application for renewal of registration signed by Tim Petit.

However, no requests for a modification to change the registrant's name or transfer the certificate of registration to a new corporate entity were ever submitted. The Government also did not introduce evidence of conduct by OTC Distribution Co., consistent with a conclusion that OTC Distribution Co. had ceased existence or discontinued business. Neither was any Texas law offered to support the conclusion that, by operation of law, OTC Distribution Co. ceased legal existence or discontinued business, simply upon filing of the articles of incorporation. Accordingly, the Acting Deputy Administrator agrees with the Administrative Law Judge that OTC Distribution Company's DEA Certificate of Registration remains a viable, if temporarily suspended, registration whose fate cannot be decided by summary disposition.

With respect to factor one, maintenance of effective controls against diversion, the Acting Deputy Administrator agrees with the Administrative Law Judge that Respondent's physical storage facility met or exceeded minimum security requirements. However, while physical security is a focus of 21 CFR 1309.71 (2000), the Acting Deputy Administrator agrees with the Government's exception to the Opinion and Recommended Ruling, that the Administrative Law Judge's discussion on this factor was unnecessarily limited to the adequacy of storage and physical access to Respondent's List I chemical products.

Among the factors required to be considered by the Acting Deputy Administrator under the general security requirements of 21 CFR 1309.71, is ''[t]he adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution and disposition of List I chemicals in its operations.'' 21 CFR 1309.71(b)(8). Further, prior agency rulings have applied a more expansive view of factor one than mere physical security. *See, e.g., Alfred Khalily, Inc.*, 64 FR 31,289, 31,292 (1999) and *NVE Pharmaceuticals, Inc.,* 64 FR 59,215, 59,217–18 (1999) (failure to identify a party to a transaction or engaging in transactions with non-registered entities fell under factor one); *State Petroleum, Inc.*, 67 FR 9,994, 9,994 (2002); *Hadid International, Inc.*, 67 FR 10,230, 10,231 (2002) and *Aqui Enterprises*, 67 FR 12,576, 12,578 (2002) (recordkeeping inadequate to track sales and customers within factor one).

Respondent's failure to maintain adequate administrative records and controls to permit a more precise audit of its List I chemical products, its inability or unwillingness to fully comply with its record keeping and report obligations under the MOA, its distribution of List I chemical products directly to customers from a freight facility loading dock and substantial seizures of OTC pseudoephedrine products from illicit sites, all weigh against Respondent as to factor one.

With regard to factor two, compliance with applicable law, the Acting Deputy Administrator agrees with the Administrative Law Judge that OTC was bound to comply with the provisions of the MOA, in addition to the recordkeeping, reporting and identification requirements in the Code of Federal Regulations. OTC then failed to provide the DEA with adequate inventory records, complete sales invoices or with any purchase records.

With regard to the accountability audits conducted by DEA Diversion Investigators which resulted in their finding of overages and shortages of listed chemicals, Respondent has filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge. OTC argues the audits were not undertaken in a ''manner that lends credibility to their results'' and ''were based on erroneous assumptions.'' Respondent's Exceptions at 4. However, the inability of DEA personnel to precisely account for the receipt and distribution of OTC's List I chemical products was principally attributable to Respondent's failure to maintain adequate records. The Acting Deputy Administrator is particularly troubled that Respondent was placed on notice by the terms of the MOA as to its need to maintain accountability for the List I chemicals it distributed—through its own records—and nevertheless failed to fully comply with those requirements either by intent, ignorance or neglect.

There was a substantial deviation between the results of two investigators

as to the number of unaccounted for bottles from the audit. Nevertheless, using the smaller numbers, the Administrative Law Judge characterized OTC's unaccounted for product as being ''unacceptably large.'' However, in its exceptions, Respondent points to the inability of OTC's supplier, OTCB, to provide exact figures as to the amount of product it shipped to OTC during the audit period, thus degrading the reliability of the figures the Diversion Investigator was required to use in making her calculations. The Administrative Law Judge adequately acknowledged the inherent difficulty in arriving at a bottom line using the records that were available. It also should be noted that OTC was required to maintain complete records of all listed chemicals it received. Nevertheless, given the large figures of unaccounted for product, it was reasonable to infer that even given the problems in accuracy noted in the record here, there were still unacceptably large quantities of unaccounted for List I chemical products in OTC's records. Further, the gravaman of the Administrative Law Judge's opinion in this section was OTC's internal failure to maintain adequate records. The Acting Deputy Administrator agrees and concludes that failure is significant and contributes to the risk to the public interest of OTC's chemical products being diverted to the illicit market. *See, e.g., In the Matter of David N. Pruitt,* 57 FR 11,339, 11,340 (1992).

Based on inclusion of the unregulated product Maxinol, in the computation chart prepared by one of the Diversion Investigators based on OTCB records (Govt. Ex. 95) and photographs of that product taken during the May 23, 2000, inspection, Respondent's exceptions further challenge the overall validity of the audits. However, it was jointly stipulated by the parties that Maxinol does not contain a List I chemical and the Administrative Law Judge's findings relating to that audit and her decision were not premised on the apparent 1296 unaccounted for bottles of Maxinol. Indeed, the six other products in the computation chart which did form the basis for the judge's findings regarding the audit, are all products containing List I chemicals and reflect large quantities of unaccounted pseudoephedrine product, including a shortage of 54,403 bottles of OTC's 120-count 60 mg. product. The Acting Deputy Administrator finds Respondent's exception to be without merit.

The Administrative Law Judge concluded Respondent engaged in suspicious regulated transactions involving uncommon methods of delivery and payment. Such transactions are required to be reported to the DEA pursuant to 21 CFR 1310.05(a)(1) (2000). With regard to delivery, OTC representatives received, processed and distributed orders containing List I chemical products directly from a freight facility, an unregistered location. These transactions would be regarded as suspicious transactions. However, the Acting Deputy Administrator agrees with the Administrative Law Judge that there was insufficient evidence showing Respondent shipped List I chemical products to an unregistered location in connection with sales to Worldwide Wholesale.

The Administrative Law Judge found OTC engaged in a suspicious, unreported transaction when it accepted $70,000.00 in cash from T.J. Wholesale as part of a transaction for products containing List I chemicals. Noting the finding that Larry Petit did not think the payment suspicious, Respondent has filed an exception asserting the Administrative Law Judge's decision in effect, improperly places the characterization as to what constitutes a ''suspicious order in the hands of the Agency after the fact.''

While the seizure of pseudoephedrine, sold by OTC to T.J. Wholesale and later discovered in illicit laboratories, had not yet been reported to OTC by a Warning Letter, the suspicious circumstances of the cash transaction were readily apparent to any reasonable person. Larry Petit's explanation, that he did not think it unusual for someone going to Las Vegas to have $70,000.00 cash, begs the relevant question. While perhaps a ''big-time'' gambler might carry cash for that purpose, that does not explain why a legitimate business enterprise would purchase a substantial amount of List I chemical products with cash, let alone $70,000.00 worth of pseudoephedrine.

In addition to the testimony of a Diversion Supervisor that payment in cash is suspicious, payment in cash and by cashier's check were identified as reasons to consider a particular transaction as being suspicious in the very materials OTC sent its own customers. OTC also included cash payments as suspicious in proposed conditions of sale contracts with its customers. (*See* Govt. Ex 11 at 4.) That Larry Petit recognized the unusual nature of the transaction was also indicated by his testimony that he told T.J. Wholesale's representative that he would take the cash ''one time only'' and ''I don't operate my company that way.'' (Tr. at 1295.) Given the foregoing, the Acting Deputy Administrator concludes Larry Petit recognized the unusual nature of this transaction and it should have been reported to DEA at the time.

The Administrative Law Judge found OTC engaged in over-the-threshold regulated transactions of pseudoephedrine products with a non-registrant. (Finding of fact 47.) This involves sales to the Red Coleman Stores. Respondent filed exceptions to this finding, arguing Red Coleman is a retail distributor which did not have to be registered with DEA. The Acting Deputy Administrator agrees the evidence is ambiguous on this point and insufficient to show the Red Coleman Stores engaged in over-the-threshold retail transactions requiring that company's registration. Accordingly, the Administrative Law Judge's finding of sales to a non-registrant in violation of DEA regulations will not be adopted.

Regarding factor three, relevant conviction record, the Administrative Law Judge found that neither the Respondent nor its principal officers have any prior conviction record relevant to the handling of List I chemicals.

Regarding factor four, applicant's experience in distributing chemicals, the Administrative Law Judge found that the officers of OTC and Larry Petit in particular, had extensive experience with distributing List I chemicals, much of which stemmed from the operation of L&M Vending Company and Larry Petit's work with DEA.

With respect to factor five, such other factors relevant to and consistent with public health and safety, the Administrative Law Judge noted the serious impact upon the public interest of the diversion of List I chemical products into the illicit production of methamphetamine. Acknowledging the distinction between ''Traditional'' and ''Non-Traditional'' markets, the Administrative Law Judge concluded OTC engaged in unusual business practices, raising suspicions as to the exact source of OTC's customer base and intended purpose of its business operations.

Specifically, OTC was not listed in the Dallas area telephone directory, did not have a marketing plan during its formation and early days of operation, has no product catalog or price list, never engaged in promotions or advertising and had no employees. Additionally, Larry Petit did not know OTC's market share of List I chemical products. However, the evidence showed OTC sold over 92 million tablets of pseudoephedrine product

from August 1999 until April 2000. This is a sizable share compared to the sales of the two largest sellers of pharmaceutical pseudoephedrine products in the United States, Pfizer and Perrigo. Despite the ''share'' of the potential market that OTC's millions of tablets represented, neither the Pfizer or Perrigo representatives were even aware of OTC as a possible competitor.

Further, the government established that between January 6, 1999 and October 18, 2000, 14 Warning Letters enumerated over 20 different seizures of OTC's pseudoephedrine products from illicit sites, including 28,423 bottles of 60-count product, 116 bottles of 100-count product and 32,589 bottles of 120-count products. The Acting Deputy Administrator agrees with the Administrative Law Judge that these warning letters demonstrate the movement of OTC's List I chemical products into the illicit market, an additional factor that OTC's continued handling of these products creates a risk to the public health and safety by fueling the activities of that illicit market.

The Acting Deputy Administrator has considered the totality of the circumstances, including Respondent's favorable evidence. *Martha Hernandez, M.D.,* 62 FR 61,145, 61,147 (1997). In this regard, Larry Petit's relationship with DEA as a cooperating source; OTC's financial audit and efforts undertaken to improve the company's financial records and better monitor its billing and shipping records and invoices; OTC's willingness to take action in response to several DEA Warning Letters; its acceptable customer compliance files; and the filing of some suspicious transaction reports by OTC are all noted. The Acting Deputy Administrator has also taken into consideration OTC's prompt notification to the Dallas Field Division of its receipt of product that came into its possession inadvertently after the Order of Immediate Suspension had been served on it, a fact pointed out in Respondent's Exceptions to the Opinion and Recommended Ruling.

On the other hand, Larry Petit's experience as a cooperating source should have sensitized him to the threat of criminal activity posed by diversion of List I chemical products and the need for OTC's full compliance with both DEA regulations and the terms of its MOA. Further, while the financial audit was a positive business step, it did not focus on the more pressing need for regulatory compliance and strict record keeping actions necessary to ensure future accountability in the handling of listed chemical products.

The Acting Deputy Administrator concludes Respondent's registration with DEA would be inconsistent with the public interest. Although some positive efforts have been undertaken after initiation of these proceedings, OTC's track record has been one of non-compliance with recordkeeping requirements of List I chemical products and an inability to account for large quantities of List I chemical products. OTC further failed to fully comply with the terms of the MOA, failing to provide complete sales records, adequate inventory records or purchases records as required. Further, OTC's handling and delivery of List I chemical products at AIT's unregistered and insecure freight facility creates an unacceptable risk of diversion.

The Acting Deputy Administrator agrees with the Administrative Law Judge that DEA has insufficient assurances that Respondent, under the possible direction of Tim Petit, will be able to aggressively correct its List I chemical product handling practices and recordkeeping problems to a level that would justify its continued registration as being in the public interest. In the past, under the direction of Larry Petit, Respondent's disregard for the regulations and its obligations under the MOA make questionable its commitment and ability to comply with the DEA statutory and regulatory requirements designed to protect the public from the diversion of listed chemicals. *See, e.g., Seaside Pharmaceutical Co.,* 67 FR 12,580, 12,583 (2002); *Aseel, Incorporated, Wholesale Division,* 66 FR 35,459, 35,461 (2001).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, 0044580RY, previously issued to OTC Distribution company, be, and it is, hereby revoked. The Acting Deputy Administrator further orders that any pending applications for renewal or modification of said registration be, and they hereby are, denied. This order is effective December 18, 2003.

Dated: November 26, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–31219 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 9, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king-darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Office of Disability Employment Policy (ODEP), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Office of Disability Employment Policy.

Type of Review: New collection.

Title: National Survey of Sub-minimum Wage (14c) Certificate Recipients.

OMB Number: 1230–0NEW.

Affected Public: Not-for-profit institutions.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 341.

Number of Annual Responses: 341.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 171.

Total Annualized Capital/Startup Costs: $0.

Total Annual costs (operating/maintaining systems or purchasing services): $0.

Description: The data collected from this survey will provide descriptive information on the current use of Fair Labor Standards Act (FLSA) section 14(c) Special Wage Certificates by Community Rehabilitation Programs in the United States. Specifically, the survey will look at perceived organizational barriers to achieving competitive employment outcomes for individuals with significant disabilities. This will include organizations' perceived training and resource needs related to moving their programs from FLSA section 14(c) to integrated employment outcomes. The information generated by the survey will be used by ODEP for policy analysis and subsequent policy development and recommendations. In addition, Training and Technical Assistance for Providers (T–TAP) will use the information to design and disseminate resources and training materials as well as provide technical assistance to Community Rehabilitation Programs (CRP). Part of disseminating this information will include writing journal articles, fact sheets, online seminars and web postings, conference presentations, or other literature that can be used by ODEP, T–TAP, CRPs, organizations, and others interested in facilitating competitive employment for individuals with disabilities.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 03–31199 Filed 12–17–03; 8:45 am]

BILLING CODE 4510–LX–M

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Education Initiative

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of intent to solicit cooperative agreement applications.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award approximately U.S. $29 million to organizations to develop and implement formal, non-formal, and vocational education programs as a means to combat exploitative child labor in the following countries and regions: Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), Ecuador, Indonesia, Southern Africa (Botswana, Lesotho, Namibia, South Africa, and Swaziland), and Turkey. ILAB intends to solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education programs) to implement programs that promote school attendance and provide educational opportunities for working children or children at risk of starting working. The programs should focus on innovative ways to address the many gaps and challenges to basic education found in the countries mentioned above. Please refer to *http://www.dol.gov/_sec/regs/fedreg/notices/2002012956.pdf* for an example of a previous notice of availability of funds and solicitation for cooperative agreement applications.

DATES: Specific solicitations for cooperative agreement applications are to be published in the **Federal Register** and remain open for at least 30 days from the date of publication. All cooperative agreements awarded will be made before September 30, 2004.

ADDRESSES: Once solicitations are published in the **Federal Register**, applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey-lisa@dol.gov.* All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

SUPPLEMENTARY INFORMATION: Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). In that time, ILAB has provided over $270 million to ILO–IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In its FY 2003 appropriations, in addition to funds earmarked for ILO–IPEC, USDOL received $37 million in two-year funding for the Child Labor Education Initiative to support programs that improve access to basic education in international areas with a high rate of abusive and exploitative child labor. All such FY 2003 funds will be obligated prior to September 30, 2004.

USDOL's Child Labor Education Initiative nurtures the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating child labor will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and may return to work or resort to other hazardous means of subsistence.

The Child Labor Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed in Washington, DC, this 11th day of December, 2003.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 03–31200 Filed 12–17–03; 8:45 am]

BILLING CODE 4510–28–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power and Light Company, H. B. Robinson Steam Electric Plant, Unit 2; Notice of Availability of the Final Supplement 13 to the Generic Environmental Impact Statement for the License Renewal of H. B. Robinson Steam Electric Plant, Unit 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published the final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating

license DPR–23 for an additional 20 years of operation at H. B. Robinson Steam Electric Plant, Unit 2. H. B. Robinson Steam Electric Plant, Unit 2 is located in Darlington County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

It is stated in Section 9.3 of the report:

Based on (1) the analysis and findings in the GEIS (NRC, 1996; 1999); (2) the ER (Environmental Report) submitted by CP&L (CP&L 2002); (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for H. B. Robinson Steam Electric Plant, Unit 2 are not so great that preserving the option of license renewal for energy-planning decision-makers would be unreasonable.

The final supplement 13 to the GEIS is available electronically for public inspection in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Emch, Jr., License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Emch may be contacted at 301–415–1590 or *RLE@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of December, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31209 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Options for Non-LWR Containment Functional Performance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission has requested the staff to develop options for containment functional performance requirements and criteria for future non-light water reactors, taking into account design features such as fuel, core, and cooling systems. The options selected will also be used for the development of the new regulatory framework for a risk-informed regulatory structure for advanced reactors.

DATES: January 14, 2004, 8:30 a.m.–5 p.m.

ADDRESSES: Doubletree Hotel; 1750 Rockville Pike; Rockville, MD 20852–1699

FOR FURTHER INFORMATION CONTACT: Shana Browde, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7652, e-mail: *srb1@nrc.gov.*

SUPPLEMENTARY INFORMATION: This notice serves as initial notification of a public workshop to provide for the exchange of information with all stakeholders regarding the staff's efforts to develop options for containment functional performance requirements and criteria for future non-light water reactors. The meeting will focus on the current work being performed by the NRC staff. A preliminary agenda is attached.

Workshop Meeting Information

The staff intends to conduct a workshop to provide for an exchange of information related to the staff's initial efforts to develop options for containment functional performance requirements and criteria for future non-light water reactors. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Shana Browde, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7652, e-mail: *srb1@nrc.gov.*

Registration

There is no registration fee for the workshop; however, so that adequate space, materials, etc., for the workshop can be arranged, please provide notification of attendance to Shana Browde, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7652, e-mail: *srb1@nrc.gov.*

Background

The possibility of using alternatives to the traditional ''essentially leak-tight'' containment structures for non-LWRs has been the subject of Commission policy review, beginning with SECY–93–092, ''Issues Pertaining to the Advanced Reactor (PRISM, MHTGR, and PIUS) and CANDU 3 Designs and Their Relationship to Current Regulatory Requirements,'' dated April 8, 1993. More recently, in SECY–02–0139, ''Plan for Resolving Policy Issues Related to Licensing Non-Light Water Reactor Designs,'' dated July 22, 2002 the staff informed the Commission of its plan to develop policy options for the design and safety performance of the containment structure and related systems for non-LWRs.

In SECY–03–0047, ''Policy Issues Related to Licensing Non-Light-Water Reactor Designs,'' dated March 28, 2003, staff discussed the policy issue of the conditions, if any, that would be acceptable for licensing a plant without a pressure-retaining containment building. In SECY–03–0047, the staff recommended to the Commission that (1) Functional performance requirements be approved for use in establishing the acceptability of either a pressure retaining, low leakage containment or a non-pressure retaining building for future non-LWR reactor designs and, if approved, (2) the staff develop the functional performance requirements using the guidance contained in the July 30, 1993 Commission Staff Requirements Memorandum (SRM) for SECY–93–092 and the Commission's guidance on the other issues in SECY–03–0047. In the June 26, 2003 SRM for SECY–03–0047, the Commission requested the staff to submit options and recommendations to the Commission on functional performance requirements and criteria for the containment of non-LWRs.

Options for containment functional performance requirements and criteria for future non-LWRs are under development by the staff. The final options and recommendations are due in April 2004. To assist in developing and evaluating the options and in identifying the recommended options, the NRC staff is planning to hold a workshop and solicit feedback from the public. Key considerations for discussion include:

• Are the identified containment functions being considered appropriate?

• Are the options for containment performance criteria appropriate?

• Are there other or alternative containment functions and options which should be considered?

• What metrics should be considered in evaluating the options, including specific advantages and disadvantages for the identified options?

Preliminary Workshop Agenda

January 14, 2004

8:30–10:15—NRC Presentation and Discussion on Options for Non-LWR Containment Functional Performance Requirements and Criteria

10:15–10:30—BREAK

10:45–noon—NRC Presentation and Discussion on Options for Non-LWR Containment Functional Performance Requirements and Criteria (continued)

Noon–1—LUNCH

1–2:15—NRC Presentation and Discussion on Options for Non-LWR Containment Functional Performance requirements and Criteria

2:15–2:30—BREAK

2:30–5—General discussion and wrap-up

Dated at Rockville, Maryland, this 11th day of December, 2003.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 03–31210 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26292; 812–12854]

Citicorp North America, Inc.; Notice of Application

December 12, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 18(f)(1) of the Act.

Applicant: Citicorp North America, Inc. (''CNAI'').

SUMMARY: Applicant requests an order permitting registered open-end management investment companies to enter into secured loan transactions with commercial paper and medium-term note conduits administered by CNAI.

DATES: The application was filed on July 17, 2002, and amended on May 8, 2003, and August 26, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 5, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Marc B. Adelman, Director and Vice President, Citicorp North America, Inc., 388 Greenwich Street, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. CNAI is a wholly-owned subsidiary of Citicorp, a bank holding company, that is, in turn, wholly-owned by Citigroup Inc. (''Citigroup''), a global financial services organization. CNAI has extensive experience and expertise as an administrator of asset-backed commercial paper and medium-term note conduit programs, having managed such programs since 1983. CNAI administers approximately $43 billion in assets in such programs worldwide. Applicant states that several open-end investment companies have expressed interest in borrowing from the commercial paper and medium-term note conduit programs that CNAI administers.

2. Applicant requests relief to permit any registered open-end management investment company or series thereof to participate from time to time as borrowers (''Borrowing Funds'') in loan facilities administered by CNAI (''Loan Facilities''). The entities proposed to be used in connection with a Loan Facility issue commercial paper and, in certain cases, medium-term notes (collectively, ''Promissory Notes'') and will use liquidity support provided by financial institutions that are ''banks'' within the meaning of section 2(a)(5) of the Act (''Liquidity Providers'') in connection with the Loan Facility (each such CNAI-administered entity, a ''Conduit''). The Conduits are limited liability companies organized under the laws of Delaware that issue Promissory Notes to fund loans secured by receivables or other financial assets of the borrowers.

3. The Promissory Notes issued by the Conduits generally are sold to institutional investors that are ''accredited investors'' as defined in rule 501(a) of Regulation D under the Securities Act of 1933 (the ''Securities Act'') or ''qualified institutional buyers'' as defined in rule 144A under the Securities Act. As administrator, CNAI negotiates business arrangements on behalf of a Conduit, including loan amounts, interest rates and fees. CNAI will act as agent for the Conduits and the related Liquidity Providers under the agreements entered into with each Borrowing Fund and in such capacity will exercise rights and enforce remedies on behalf of the Conduit and Liquidity Providers. Personnel employed by CNAI have substantially similar levels of experience and expertise as personnel that administer loans backed by financial assets made by Citibank, N.A., which may act as a Liquidity Provider.

4. As security for a loan, Borrowing Funds will pledge assets (''Pledged Assets'') for the benefit of the Conduit and the Liquidity Providers. The Pledged Assets will meet eligibility criteria set by the Conduit and such criteria will be consistent with the Borrowing Fund's investment objectives and policies. For each loan transaction, CNAI will evaluate (a) the type and nature of a Borrowing Fund's Pledged Assets to determine whether they meet the Conduit's standards for collateral; (b) the operations and history of the Borrowing Fund; and (c) the financial position and operations of the Borrowing Fund's investment adviser.

5. Applicant states that a Conduit would make loans to a Borrowing Fund on an uncommitted basis and the related Liquidity Providers would, subject to the terms of the Loan Facility, be obligated to make loans to the Borrowing Fund in the event the Conduit was unable or unwilling to make such loans. The Conduit at any

time and for any reason may (a) sell an outstanding loan to a Liquidity Provider, or (b) require a Liquidity Provider to provide financing to a Borrowing Fund instead of the Conduit. CNAI states that these arrangements provide additional assurances to holders of Promissory Notes that the Promissory Notes will be paid at maturity.

6. A Conduit purchases receivables and other assets from, and makes secured loans to, a broad range of sellers and borrowers in a variety of industries. Aggregate loans made by a Conduit to Borrowing Funds are not expected to be more than 10%, and usually would be considerably less than 10%, of the Conduit's outstanding loans and other assets.

7. CNAI represents that the revolving credit and security agreement of a Loan Facility, which will be negotiated by the parties, will contain representations, warranties, covenants and events of default that are customary for secured loan transactions involving open-end investment companies as well as such other terms that are specific to a particular Borrowing Fund and the conduct of its business. A Borrowing Fund will have the right to prepay its loans and terminate its participation in a Loan Facility upon prior notice at any time. The Pledged Assets of a Borrowing Fund will be available solely to secure repayment of the loans and other outstanding obligations incurred by that Borrowing Fund under a Loan Facility. CNAI further states that a Borrowing Fund would have the same rights and remedies under state and federal law with respect to a loan from a Conduit that it would have with respect to a comparable loan from a bank. CNAI also states that the arrangements with the Liquidity Providers protect Borrowing Funds by providing an alternative source of financing in the event a Conduit is unable to continue lending funds.

8. No Borrowing Fund will participate in a Loan Facility unless it has represented, in writing, to CNAI, that (a) its policies permit borrowing and, if applicable, the use of leverage; (b) all borrowing transactions pursuant to the Loan Facility will be subject to the requirements of the Act, the rules and regulations thereunder, and any other applicable interpretations or guidance from the Commission or its staff; and (c) each borrowing transaction will be conducted in accordance with all applicable representations and conditions of the application. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's Board of Directors or Trustees (''Board'') including a majority of the directors or trustees that are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''Disinterested Directors'') will determine that such participation is consistent with the Borrowing Fund's investment objectives and policies and in the best interests of the Borrowing Fund and its shareholders. Each Borrowing Fund's Board, including a majority of the Disinterested Directors, will also adopt procedures for evaluating and making certain determinations concerning the terms of each loan transaction between the Borrowing Fund and a Conduit.

9. CNAI states that the proposed Loan Facilities would enable Borrowing Funds to borrow money from the Conduits at lower cost than obtaining comparable loans from a bank. CNAI states that a Conduit's cost of funds is lower than that of banks, and this advantage will be passed on to the Borrowing Funds.[1]

Applicant's Legal Analysis

1. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company.[2] Section 2(a)(5) defines ''bank'' as a depository institution, a branch or agency of a foreign bank, a member bank of the Federal Reserve System, a banking institution or other trust company that, as a substantial portion of its business, receives deposits or exercises fiduciary powers similar to those permitted to national banks, or a receiver, conservator or liquidating agent of any of the foregoing. Applicant states that while a Conduit engages in many of the same business activities as banks, it is not a ''bank'' under this definition.

2. Section 6(c) of the Act permits the Commission to exempt any person or transaction or any class or classes of persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. CNAI requests exemptive relief from section 18(f)(1) solely to the extent necessary to allow a Borrowing Fund to borrow from a Conduit that is not a bank. CNAI believes that permitting the Borrowing Funds to borrow from a Conduit is fully consistent with the purposes and policies of section 18(f)(1) and would not implicate the concerns underlying that provision.

3. CNAI states that section 18(f) of the Act reflects Congressional concern about excessive borrowing and the issuance of senior securities by open-end investment companies because these practices could unduly increase the speculative character and investment risk of junior securities. CNAI notes that Borrowing Funds would remain subject to the 300% asset coverage requirement in section 18(f)(1) of the Act for all borrowings, including those from a Conduit. CNAI further represents that Conduit loans will not impose any restrictions on a Borrowing Fund's shareholders that are different from those imposed by a collateralized bank loan. Finally, CNAI argues that permitting a Borrowing Fund to borrow from a Conduit rather than a bank is expected to reduce its costs of borrowing, which should decrease the risk that a Borrowing Fund's borrowing costs will exceed the return from securities purchased with borrowed money and lessen any related incentive to purchase more speculative portfolio securities to cover those costs.

4. CNAI states that section 18(f) of the Act also limited open-end investment companies to borrowing from traditional institutional lending sources out of a Congressional concern that public holders of senior securities might be unaware that they were much riskier instruments than senior securities issued by operating companies. Senior securities of investment companies typically were secured by assets that were subject to wide fluctuations in value. Further, common shareholders could redeem at any time, which also might affect an open-end investment company's ability to repay its outstanding debt.

5. CNAI argues that the Loan Facilities do not involve the type of senior security holder that section 18(f)(1) of the Act was designed to protect and that the structure of the Loan Facilities and related Conduits provide sufficient protection to the parties that face any risk of loss by lending to an open-end investment company. A Conduit is administered by CNAI, which has extensive expertise in administering loans collateralized by financial instruments that equals or

[1] The rate at which a Liquidity Provider would make a loan to a Borrowing Fund would not be as favorable as that of the Conduit, but would be comparable to the rates on secured lines of credit from banks. CNAI anticipates that a Conduit, rather than a Liquidity Provider, will be the lender to the Borrowing Funds under a Loan Facility, absent extenuating circumstances.

[2] Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.

exceeds the expertise of most banks. The Liquidity Providers are banks as defined by the Act and thus not the type of senior security holder that Congress believed needed protection. CNAI states that the Promissory Notes are general obligations of the Conduit and loans to Borrowing Funds are not expected to exceed 10% of a Conduit's assets. Any risk of loss on the Promissory Notes posed by loans to open-end investment companies is further reduced by CNAI's expertise, the Conduit's ability to sell the loans to the Liquidity Providers, and the Conduit-wide liquidity sources.

6. Applicant states that section 18(f) also reflects a concern that complex capital structures may permit insiders to manipulate the allocation of expenses and profits; facilitate control of the investment company by junior security shareholders with little investment; and make it difficult for investors in the investment company to understand what their stock is worth. CNAI states that borrowing from Conduits would not facilitate pyramiding of control or manipulative reallocation of expenses and profits. Further, CNAI believes that borrowings from a Conduit would not be any more difficult for shareholders of a Borrowing Fund to understand than bank borrowings.

7. Applicant also states that section 18(f) reflects a concern that existed when the Act was adopted that borrowings by open-end investment companies could be used to invest in securities without being subject to limitations of the Board of Governors of the Federal Reserve System (''FRB'') on the amount of credit that could be used for these purposes (''margin requirements''). Under Regulations U and T under the Securities Exchange Act of 1934, in effect prior to enactment of the Act, only borrowings for such purposes made by a domestic bank or broker-dealer were subject to margin requirements. CNAI states that a Conduit would be subject to the same credit restrictions as a bank under Regulation U as currently in effect.

8. Finally, applicant believes the requested relief will benefit Borrowing Funds by providing them with an alternative, lower-cost source of financing. For all of these reasons and in light of the protections afforded by the conditions set forth below, CNAI believes that permitting Borrowing Funds to borrow from the Conduits would be in the best interests of the Borrowing Funds and their shareholders, appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. All Borrowing Funds will comply with the asset coverage requirements in section 18(f)(1) of the Act, including with respect to all borrowings from a Conduit.

2. A loan by a Conduit to a Borrowing Fund will be at an interest rate equal to the Conduit's cost of funds (*i.e.*, the weighted average Promissory Note rate plus dealer commissions).

3. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's Board, including a majority of the Disinterested Directors, will determine that participation in the Loan Facility is consistent with the Borrowing Fund's investment objectives and policies and is in the best interests of the Borrowing Fund and its shareholders. In addition, a Borrowing Fund will disclose in its statement of additional information all material facts about its participation in the Loan Facility.

4. Before a Borrowing Fund may participate in a Loan Facility, its Board, including a majority of the Disinterested Directors, will adopt procedures governing the Borrowing Fund's participation in the Loan Facility (''Procedures''). In addition to any other provisions the Board may find necessary or appropriate to be included in the Procedures, the Procedures will require that, before a Borrowing Fund may enter into loan transactions with a Conduit, the Board, including a majority of the Disinterested Directors, will determine that:

(a) The borrowing is in the best interests of the Borrowing Fund and its shareholders;

(b) The borrowing and pledge of assets are consistent with the Borrowing Fund's investment objectives and policies;

(c) The interest rate on the loan does not exceed the rate on a comparable collateralized bank loan;

(d) The Borrowing Fund's asset eligibility criteria are consistent with its investment objectives and policies; and

(e) Each Borrowing Fund's investments, consistent with the asset eligibility criteria and any other requirements of participating in the Loan Facility, will be in the best interests of the Borrowing Fund and its shareholders.

5. If a Conduit determines (a) to require the Liquidity Providers to acquire from the Conduit outstanding loans made to a Borrowing Fund, or (b) not to extend additional loans to a Borrowing Fund, the Board of the Borrowing Fund, including a majority of the Disinterested Directors, will be notified promptly. As soon as practicable, the Board, including a majority of the Disinterested Directors, must determine whether it is in the best interests of the Borrowing Fund and its shareholders to continue to participate in the Loan Facility or to terminate the Borrowing Fund's participation in the Loan Facility in accordance with its terms.

6. At each regular quarterly meeting, the Board, including a majority of the Disinterested Directors, will (a) review a Borrowing Fund's loan transactions under a Loan Facility during the preceding quarter, including the terms of each transaction; and (b) determine whether the transactions were effected in compliance with the Procedures and the terms and conditions of the order. At least annually, the Board, including a majority of the Disinterested Directors, will (a) with respect to a Borrowing Fund's continued participation in a Loan Facility, make the determinations required in condition 3 above and (b) approve such changes to the Procedures as it deems necessary or appropriate.

7. A Borrowing Fund will maintain and preserve permanently in an easily accessible place a written copy of the Procedures and any modifications to the Procedures. The Borrowing Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction with a Loan Facility occurred, the first two years in an easily accessible place, a written record of each transaction setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan and all information upon which the determinations required by these conditions were made.

8. The applicant will not enter into a Loan Facility with any Borrowing Fund if, at the time of such transaction, the applicant, Conduit or Liquidity Provider is an affiliated person of a Borrowing Fund, within the meaning of section 2(a)(3) of the Act, or an affiliated person of an affiliated person of a Borrowing Fund.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31170 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48914; File No. SR–BSE–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. To Establish a General Revenue Sharing Program for Member Firms

December 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2003, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 10, 2003, the Exchange amended the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to establish a general revenue sharing program for Member Firms. The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule to establish a new general revenue sharing program. In order to remain competitive with other market centers that trade Nasdaq National Market and Nasdaq SmallCap securities (''Nasdaq Securities''), including the Nasdaq Stock Market and National Stock Exchange (formerly the Cincinnati Stock Exchange), the BSE is implementing a general revenue sharing program based on National Stock Exchange's revenue sharing program, as adopted in 1999 and subsequently amended.[5]

The purpose of the proposed rule change is to provide general revenue sharing in certain securities on the BSE. To compete more effectively, the BSE proposes to provide incentive for Member Firms to execute trades on the BSE and recover costs by means of a quarterly revenue sharing program, without diminishing the quality of the market, including regulatory quality.[6]

The proposed rule change contemplates the Exchange sharing with Member Firms all or a portion of the BSE Member Firm's Operating Revenue (''MFOR'') attributable to transactions in Nasdaq Securities after operating expenses and working capital needs have been met. MFOR is comprised of all operating revenue generated by trading activity on the Exchange and consists of transaction fees, technology fees, and market data revenue that is attributable to BSE Member Firm activity in Nasdaq Securities. All regulatory monies are excluded from MFOR.

Under the proposal, the Exchange's Board of Governors would have the authority to determine on an ongoing basis the appropriate amount of MFOR to be shared with Member Firms. In making this determination, the Board would be guided by the need to balance the objective of maintaining the BSE's financial integrity.[7] To simplify the administration of the revenue sharing program and smooth out monthly expense fluctuations, the program will operate on a quarterly basis. In addition, to the extent that Nasdaq market data revenue is subject to a year-end adjustment, revenues distributed to Member Firms are subject to adjustment accordingly, to ensure that Member receipts of market data revenue are consistent with the year-end true up procedures applied under the Nasdaq UTP Plan.

MFOR will be shared with Member Firms on a pro rata basis. After the BSE has accounted for operating expenses and working capital contributions, each Member Firm will receive a percentage of the MFOR to be shared that is equal to that firm's percentage contribution to the MFOR. In no event will the amount of revenue shared with Member Firms exceed MFOR.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and with section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

In addition, the BSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect that mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The BSE believes that the proposed rule change will create incentives for Member Firms to actively quote and execute transactions on the Exchange, which will, in turn, enhance the National Market System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 9, 2003 letter from John Boese, Vice President, Legal and Compliance, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments (''Amendment No. 1'') Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on December 10, 2003, the date the BSE filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] Securities Exchange Act Release Nos. 41082 (February 22, 1999), 64 FR 10035 (March 1, 1999) (SR–CSE–99–02) (notice); 41286 (April 14, 1999), 64 FR 19843 (April 22, 1999) (SR–CSE–99–02) (approval order); 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR–CSE–2002–14) (notice of filing and immediate effectiveness).

[6] *See infra* note 7.

[7] In particular, the BSE will not compromise its regulatory responsibilities by sharing revenue that would more appropriately be used to fund regulatory responsibilities. The Exchange will be mindful of its regulatory responsibilities when determining its working capital needs. *See* Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843, 19844 (April 22, 1999) (SR–CSE–99–02).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–BSE–2003–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–2003–22, and should be submitted by January 8, 2004.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31168 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48913; File No. SR–CBOE–2003–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Appointment of the Members and Chairman of Its Governance Committee

December 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On November 6, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 2.1 pertaining to the appointment of the members and Chairman of the Exchange's Governance Committee. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, dated November 6, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE clarified the current procedure by which Governance Committee members are appointed, explained the reason for the proposed rule change, and revised a portion of the original proposed rule text. These changes are more fully described in Section II below.

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

RULES

* * * * *

CHAPTER II—Organization and Administration

Part–A—Committees

Committees of the Exchange

Rule 2.1. Committees of the Exchange

(a) Establishment of Committees. In addition to committees specifically provided for in the Constitution, there shall be the following committees: Appeals, Arbitration, Business Conduct, appropriate Floor Procedure Committees, Floor Officials, appropriate Market Performance Committees, Membership, Product Development and such other committees as may be established in accordance with the Constitution. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board, with the approval of the Board, shall appoint the chairmen and members of such committees to serve for terms expiring at the regular meeting of the Board following the next succeeding Annual Election Meeting or until successors are appointed. Consideration shall be given to continuity and to having, where appropriate, a cross section of the membership represented on each committee. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board may, at any time, with or without cause, remove any member of such committees. Any vacancy occurring in one of these committees shall be filled by the Vice Chairman of the Board for the remainder of the term. Notwithstanding the foregoing, the Chairman of the Board, with the approval of the Board, shall appoint Directors to serve on the [Audit and Compensation Committees,] *Governance Committee,* whose members shall not be subject to removal except by the Board. *The Chairman of the Governance Committee shall be appointed by the Chairman of the Board.* Whenever the Vice Chairman of the Board is, or has reason to believe he may become, a party to any proceeding of an Exchange committee, he shall not exercise his power to appoint or remove members of that committee, and the Chairman of the Board shall have such power.

(b)–(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2.1 to state that the Chairman of the Board shall have the authority to appoint the members of the Exchange's Governance Committee, and also to appoint the Chairman of the Governance Committee. The CBOE Governance Committee is a standing committee of the CBOE's Board of Directors. The CBOE believes that the proposed amendment to Rule 2.1 granting to the Chairman of the Board the authority to appoint the members and the Chairman of the Governance Committee is consistent with other provisions in CBOE's Constitution that grant the Chairman of the Board the authority to appoint the members and Chairman of other standing committees of the Board of Directors, such as the Audit and Compensation Committees.[4]

In addition to the foregoing proposed change to Rule 2.1, the Exchange proposes a ''housekeeping'' amendment to Rule 2.1—namely, to delete the reference to the Audit Committee and Compensation Committee in Rule 2.1 as these two committees are specifically codified in Sections 7.3 and 7.4, respectively, of the CBOE's Constitution.

In Amendment No. 1, the CBOE clarified that currently the Vice Chairman of the Exchange, with the approval of the Board of Directors, has the authority to appoint the Chairman and members of the Governance Committee. The CBOE explained that it believes it is appropriate that the Chairman have this authority, as the Governance Committee, which is a standing Board committee, reviews and evaluates the Exchange's governance structure and makes recommendations to the Board concerning the governance of the Exchange, and assures that as an on-going matter, questions pertaining to governance that may arise from time to time will be reviewed promptly and brought to the Board's attention. The Exchange further noted that its proposal is consistent with other provisions in CBOE's Constitution, which grant the Chairman the authority to appoint the members and the chairmen of other standing committees of the Board of Directors. Finally, the CBOE deleted a reference in the proposed rule's text to the term ''members'' in reference to the Governance Committee, and replaced it with the term ''directors,'' which is the term used in the current rule. CBOE explained that the Governance Committee is comprised currently only of directors and will continue to be comprised only of directors in the future.

2. Statutory Basis

The Exchange believes that, by providing that the members of the Exchange's Governance Committee and the Chairman of the Governance Committee shall be appointed by the Chairman of the Board, the proposed rule change furthers the objectives of section 6(b)(5) of the Act[5] to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–37 and should be submitted by January 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31167 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* CBOE Constitution, Sections 7.3 and 7.4.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48896; File No. SR–NSCC–2003–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement to the Insurance Processing Service

December 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 22, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify NSCC's Rule 57, Section 1, to allow NSCC's members, insurance carrier members, and data services-only members to submit application information and to settle premium payments with respect to life insurance products by adding a new service called Portal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance NSCC's Insurance Processing Service (''IPS'') by allowing NSCC's members, insurance carrier members, and data services only members to submit application information and to settle premium payments with respect to life insurance products.

Unlike other parts of the financial services industry, the life insurance and annuity industries rely heavily on manual processing and one-off communications to process the sale of their products. The lack of technology, absence of standards, and resulting lengthy delays in the sales process contribute to a typical lag of 30 to 90 days between the initial sale by the sales person or distributor and the issuance by the insurance carrier of a life insurance policy.

IPS currently offers many services that help automate and standardize certain aspects of the processing of annuities and life insurance. However, there are many aspects of this processing that fall outside of current IPS capabilities. For example, IPS currently allows its users to transmit information through IPS regarding annuities applications as part of the Initial Application Information (''APP'') function, but the APP function does not accommodate life insurance applications. In addition, not all potential users of IPS have programmed their systems to allow full access to existing IPS services.

To remedy some of the problems outlined above, NSCC proposes to introduce a system called ''Portal'' that will handle annuities and life insurance applications through APP. Users will access Portal through a software package provided by NSCC that will allow users to more easily access certain IPS functions without undertaking all of the internal programming that they would otherwise have to do.

In addition, because there are other functions that distributors of life insurance and annuity products must perform between the sale of the product and its issuance, NSCC is contracting with third party service providers that offer these functions. These functions include producer education (*i.e.*, registered representatives who work for members or data services only members who help distributors and producers fulfill their educational requirements for offering products under state law); producer licensing (helps to streamline the licensing process for distributors to have their producers become licensed by states and facilitates the exchange of information relating to licensees); product profile repository (provides a database of generic details regarding individual life insurance and annuity products); electronic submission of new business (provides electronic application forms of various insurance carriers that can be filled out and transmitted electronically); call center (teleunderwriting that gathers data required for an annuity or life insurance application provided by applicants); requirements ordering (arranges with third parties for medical examinations, review of driving records, credit history check, etc.); and case management (manages the case, including obtaining all necessary information for the electronic application prior to the underwriting process, oversees the integration of information from the call center and requirements outsourcing processes, and performs quality assurance functions).

NSCC will charge Portal users through the NSCC settlement system.[3] The users will be subject to the service standards offered to NSCC by these service providers. Portal will be subject to the same liability standard as with other features of IPS.[4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate processing of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The proposed fee schedule for Portal users is being developed and will be filed with the Commission at a later date.

[4] NSCC's Rule 57, Section 6 states: ''[NSCC] will not be responsible for the completeness or accuracy of the IPS Data received from or transmitted to an Insurance Carrier Member, Member or Data Services Only Member through IPS nor for any errors, omissions or delays which may occur in the absence of gross negligence on [NSCC]'s part, in the transmission of such IPS Data to or from an Insurance Carrier Member, or Data Services Only Member.''

19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder[6] because it effects a change that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after the date of the filing. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office and on NSCC's Web site at *http://www.nscc.com/legal/.* All submissions should refer to File No. SR–NSCC–2003–18 and should be submitted by January 8, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31213 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Office of Oceans Affairs

[I.D. 120103G]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: Office of Oceans Affairs, Department of State.

ACTION: Notice.

SUMMARY: At its Twenty-Second Meeting in Hobart, Tasmania, from October 27 to November 7, 2003, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twenty-Second meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR Website at *http://www.ccamlr.org*. This notice, therefore, together with the U.S. regulations referenced under the **SUPPLEMENTARY INFORMATION** provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew V. Cassetta, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; tel: 202–647–3947; fax: 202–647–9099; e-mail: *cassettamv@state.gov*.

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III-International Fishing and Related Activities, Part 300–International Fishing Regulations, Subpart A-General; Subpart B-High Seas Fisheries; and Subpart G-Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Conventional area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fisher; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

The Commission agreed that the following conservation measures will remain in force in 2003/04: compliance: 10–01 (1998), 10–02 (2001), 10–03 (2002), 10–04 (2002) and 10–06 (2002); general fishery matters: 21–01 (2002), 21–02 (2002), 22–01 (1986), 22–02 (1984), 22–03 (2002), 23–02 (1993), 23–03 (1991), 23–04 (2000), 23–05 (2000), 23–06 (2002), 25–01 (1996), 31–01 (1986), 32–01 (2001), 32–02 (1998), 32–03 (1998), 32–04 (1986), 32–05 (1986), 32–06 (1985), 32–07 (1999), 32–08 (1997), 32–10 (2002), 32–11 (2002), 32–12 (1998), 33–01 (1995), 41–03 (1999), 51–01 (2002), 51–02 (2002) and 51–03 (2002); protected areas: 91–01 (2002), 91–02 (2002) and 91–03 (2002).

At its twenty-second meeting in Hobart, Tasmania, the Commission agreed that the following resolutions will remain in force in 2003/04: Resolutions 7/IX, 10/XII, 14/XIX, 16/XIX, 17/XX, 18/XXI and 19/XXI. The Commission had also considered the implementation of a C-VMS. Although significant progress had been made, the Commission did not reach consensus at the most recent meeting. As a result, Conservation Measure 10–04 and Resolution 16/XIX remain in force.

New and Revised Conservation Measures. The Commission revised the following conservation measures at its twenty-second meeting: compliance: 10–05 (2002) and 10–07 (2002); general

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

fishery matters: 23–01 (2000), 24–01 (2002), 24–02 (2002), 25–02 (2002) and 25–03 (1999). In addition, thirty-four measures and two resolutions were adopted at the twenty-second meeting follow. For further information, see the CCAMLR web site at *http://www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2003/2004), or contact the Commission at the CCAMLR Secretariat, P.O. Box 213, North Hobart, Tasmania 7002, Australia. Tel: (61) 3–6234–9965.

CONSERVATION MEASURES AND RESOLUTIONS ADOPTED ATCCAMLR-XXII

CONSERVATION MEASURE 10–05 (2003)

Catch Documentation Scheme for *Dissostichus* spp.

[only paragraphs A5. and A9. of Annex 10–05/A of this measure were revised]

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognizing that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus* spp., hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorized representative of its flag vessels authorized to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or transhipps *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorization to do so. Each Contracting Party shall provide *Dissostichus* catch document forms to each of its flagvessels authorized to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) the name, address, telephone and fax numbers of the issuing authority;

(ii) the name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) the reference number of the license or permit, whichever is applicable, that is issued to the vessel;

(iv) the weight of each *Dissostichus* species landed or transhipped by product type, and

(a) by CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) by FAO statistical area, subarea or division if caught outside the Convention Area;

(v) the dates within which the catch was taken;

(vi) the date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) the name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 10–05/A to this measure. The standard catch document is attached to the annex.

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(i) includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 10–05/A to this measure; and

(ii) includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated

Dissostichus catch document(s) and, where appropriate, validated re-export

document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the

information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and,

as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch documents by Flag States by using, inter alia, VMS, in respect of catches[1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

ANNEX 10–05/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) a four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) a three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the license or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) the master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) if a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) if a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division and indicating whether the catch was caught in an EEZ or on the high seas, as appropriate; and

(iv) the master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches[2] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraphs 5 and 6 of Conservation Measure 10–04), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorization to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available. The *Dissostichus* catch document will receive a confirmation number from the Flag State, only when it is convinced that the information submitted by the vessel fully satisfies the provisions of this conservation measure.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) in the case of a transhipment, the master shall confirm the transhipment obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is being transferred;

(ii) in the case of a landing, the master or authorized representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(iii) in the case of a landing, the master or authorized representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone;

(iv) in the event that the catch is divided upon landing, the master or authorized representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tons for an entire fishing trip by a vessel.

[2] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the ConventionArea. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tons for an entire fishing trip by a vessel.

of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorized representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorized representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after each landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) the master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(ii) the master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade;

(iii) in the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorized representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) the exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) the exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) the exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) the exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) the re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) the re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) the re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s); and

(iv) the responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

ANNEX 10–05/B

THE USE OF THE CDS FUND

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat,although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for outine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemized statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to makerecommendations to the Commission on whether to fund special projects orspecial needs. The Review Panel will operate by email intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

CONSERVATION MEASURE 10–07 (2003)

Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures

1. The Contracting Parties request non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined.

2. At each annual meeting the Commission shall identify those non-Contracting Parties whose vessels are engaged in illegal, unregulated and unreported (IUU) fishing activities in the Convention Area that threaten to undermine the effectiveness of CCAMLR conservation measures, and shall establish a list of such vessels (IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

3. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or which has been denied port access, landing or transhipment in accordance with Conservation Measure 10–03 is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

4. When the non-Contracting Party vessel referred to in paragraph 3 enters a port of any Contracting Party, it shall be inspected by authorized Contracting Party officials in accordance with Conservation Measure 10–03 and shall not be allowed to land or tranship any fish species subject to CCAMLR conservation measures it might be holding on board unless the vessel establishes that the fish were caught in compliance with all relevant CCAMLR conservation measures and requirements under the Convention.

5. The Contracting Party which sights the non-Contracting Party vessel or denies it port access, landing or transhipment under paragraph 3 shall attempt to inform the vessel it is presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties and to the Secretariat, and to the Flag State of the vessel.

6. Information regarding such sightings or denial of port access, landings or transhipments, and the results of all inspections conducted in the ports of Contracting Parties, and any subsequent action shall be transmitted immediately to the Commission in accordance with Article XXII of the Convention. The Secretariat shall transmit this information to all Contracting Parties, within one business day of receiving this information, and to the Flag State of the sighted vessel as soon as possible. At this time, the Secretariat shall, in consultation with the Chair of the Commission, request the Flag State concerned that, where appropriate, measures be taken in accordance with its applicable laws and regulations to ensure that the vessel or vessels in question desist from any activities that undermine the effectiveness of CCAMLR conservation measures, and that the Flag State report back to CCAMLR on the results of such enquiries and/or on the measures it has taken in respect of the vessel or vessels concerned.

7. Contracting Parties may at any time submit to the Executive Secretary any additional information, which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Convention Area.

8. The Standing Committee on Implementation and Compliance (SCIC) shall review the information received pursuant to paragraphs 5,6 and 7and any other information provided during its annual deliberations which may be considered relevant to this review.

9. Following the review referred to in paragraph 8, SCIC shall submit to the Commission for approval, a proposed IUU Vessel List.

10. The Executive Secretary, SCIC and the Commission shall undertake each year the procedures set out in this conservation measure in respect of adding or removing vessels from the IUU Vessel List. In this regard, SCIC shall recommend that the Commission removes vessels from the list approved in a previous annual meeting if the relevant Flag State satisfies the Commission that:

(a) the vessel did not take part in IUU fishing activities described in paragraph 2; or

(b) it has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity; or

(c) the vessel has changed ownership and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(d) the Flag State has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

11. Contracting Parties shall take all necessary measures, to the extent possible in accordance with their applicable legislation, in order that:

(a) the issuance of a licence to vessels included in the IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(b) fishing vessels, support vessels, mother-ships and cargo vessels flying their flag do not participate in any transhipment or joint fishing operations with vessels registered in the IUU Vessel List;

(c) vessels appearing in the IUU Vessel List that enter ports are not authorized to land or tranship therein and are inspected in accordance with

Conservation Measure 10–03 on so entering;

(d) the chartering of vessels included in the IUU Vessel List is prohibited;

(e) granting of their flag to vessels appearing in the IUU Vessel List is refused;

(f) imports of *Dissostichus* spp. from vessels included in the IUU Vessel List are prohibited;

(g) 'Export or Re-export Government Authority Validation' is not verified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel included in the IUU Vessel List;

(h) importers, transporters and other sectors concerned, are encouraged to refrain from negotiating and from transhipping of fish caught by vessels appearing in the IUU Vessel List;

(i) any appropriate information is collected and exchanged with other Contracting Parties or cooperating non-Contracting Parties, entities or fishing entities with the aim of detecting, controlling and preventing the use of false import/export certificates regarding fish from vessels appearing in the IUU Vessel List.

12. The Executive Secretary shall place the IUU Vessel List on a secure section of the CCAMLR website.

13. The Commission shall request those non-Contracting Parties identified pursuant to paragraph 2, to immediately take steps to address the IUU fishing activities of the vessels flying their flag that have been included in the IUU Vessel List, including if necessary, the withdrawal of the registration or of the fishing licenses of these vessels, the nullification of the relevant catch documents and denial of further access to the Catch Documentation Scheme for *Dissostichus* spp. (CDS), and to inform the Commission of the measures taken in this respect.

14. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 2, to cooperate fully with the Commission in order to avoid undermining the effectiveness of conservation measures adopted by the Commission.

15. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by those non-Contracting Parties identified pursuant to paragraph 2 to which requests have been made pursuant to paragraphs 13 and 14, and identify those which have not rectified their fishing activities.

16. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified non-Contracting Parties. In this respect, non-Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with the World Trade Organization (WTO), that may be necessary to prevent, deter and eliminate the IUU fishing activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

CONSERVATION MEASURE 23–01 (2003)

Five-day Catch and Effort Reporting System

This conservation measure is adopted in accordance with Conservation Measure 31–01 where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels. The catch and effort data shall reach the Executive Secretary not later than five (5) days after the end of the reporting period, or in the case of exploratory fisheries, notlater than two (2) working days after the end of the reporting period. In the case of longline fisheries, the number of hooks shall also be reported.

3. A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery even if no catches are taken.

4. The catch of all species, including by-catch species, must be reported.

5. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

6. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. In the case of exploratory fisheries, the Executive Secretary shall also notify total aggregate catch for the season todate in each small-scale research unit (SSRU) together with an estimate of the date upon which the total allowable catch is likely to be reached in each SSRU for that season. Estimates shall be based on a projection forward of the trend in daily catch rates,obtained using linear regression techniques from a number of the most recent catch reports.

7. At the end of every six reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the six most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

8. If the estimated date of completion of the total allowable catch, is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later. In the case of exploratory fisheries, if the estimated date of completion of the catch in any SSRU is within five days of the day on which the Secretariat received the report of catches, the Executive Secretary shall additionally inform all Contracting Parties thatfishing in that SSRU will be prohibited from that calculated day, or on the day on which the report was received, whichever is the later.

9. Should a Contracting Party fail to transmit a report to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two five-day periods, or, in the case of exploratory fisheries, a further one five-day period, those data have still not been provided, the Executive Secretary shall notify all Contracting Partiesof the closure of the fishery to the vessel which has failed to supply the data as required and the Contracting Party concerned shall require the vessel to cease fishing. If the Executive Secretary is notified by the Contracting Party that the failure of the vessel to report is due to technical difficulties, the vessel may resume fishing once the report orexplanation concerning the failure has been submitted.

CONSERVATION MEASURE 24–01 (2003)[3,4]

The Application of Conservation Measures to Scientific Research[only Annex 24–01/B of this measure was revised]

This conservation measure governs the application of conservation measures to scientific research and is adopted in accordance with Article IX of the Convention.

1. General application:

(a) Catches taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

(b) The CCAMLR within-season catch and effort reporting systems shall applywhenever the catch within a specified reporting period exceeds five tons, unless more specific regulations apply to the particular species.

2. Application to vessels taking less than 50 tons of finfish including no more than the amounts specified for finfish taxa in Annex 24–01/B and less than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B:

(a) Any Member planning to use a vessel for research purposes when the estimated catch is as above shall notify the Secretariat of the Commission which in turn will notify all Members immediately, according to the format provided in Annex 24–01/A. This notification shall be included in the Members' Activities Reports.

(b) Vessels to which the provisions of paragraph 2(a) above apply, shall be exempt from conservation measures relating to mesh size regulations, prohibition of types of gear, closed areas, fishing seasons and size limits, and reporting system requirements other than those specified in paragraphs 1(a) and (b) above.

3. Application to vessels taking more than 50 tons of finfish or more than the amounts specified for finfish taxa in Annex 24–01/B or more than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B:

(a) Any Member planning to use any type of vessel to conduct fishing for research purposes when the estimated catch is as above, shall notify the Commission and provide the opportunity for other Members to review and comment on its research plan. The plan shall be provided to the Secretariat for distribution to Members at least six months in advance of the planned starting date for the research. In the event of any request for a review of such plan being lodged within two months of its circulation, the Executive Secretary shall notify all Members and submit the plan to the Scientific Committee for review. Based on the submitted research plan and any advice provided by the appropriate working group, the Scientific Committee will provide advice to the Commission where the review process will be concluded. Until the review process is complete the planned fishing for research purposes shall not proceed.

(b) Research plans shall be reported in accordance with the standardized guidelines and formats adopted by the Scientific Committee, given in Annex 24–01/A.

(c) A summary of the results of any research subject to these provisions shall be provided to the Secretariat within 180 days of the completion of the research fishing. A full report shall be provided within 12 months.

(d) Catch and effort data resulting from research fishing in accordance with paragraph (a) above, should be reported to the Secretariat according to the haul-by-haul reporting format for research vessels (C4).

CONSERVATION MEASURE 24–02 (2003)

Experimental Line-weighting Trials

In respect of fisheries in Statistical Subareas 48.6, 88.1 and 88.2 and Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2, paragraph 3 of Conservation Measure 25–02 shall not apply only where a vessel can demonstrate, prior to entry into force of the license for this fishery and prior to entering the Convention Area, its ability to fully comply with either of the following experimental protocols.

Protocol A:

A1. The vessel shall, under observation by a scientific observer:

(i) set a minimum of five longlines with a minimum of four Time Depth Recorders (TDR) on each line;

(ii) randomize TDR placement on the longline within and between sets;

(iii) calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) the sink rate shall be measured as an average of the time taken to sink from the surface (0 m) to 15 m;

(b) this sink rate shall be at a minimum rate of 0.3 m/s;

(iv) if the minimum sink rate is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded;

(v) all equipment and fishing gear used in the tests is to be the same as that to be used in the Convention Area.

A2. During fishing, for a vessel to maintain the exemption to night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) aim to place a TDR on every longline set during the observer's shift;

(ii) every seven days place all available TDRs on a single longline to determine any sink rate variation along the line;

(iii) randomize TDR placement on the longline within and between sets;

(iv) calculate an individual rate for each TDR when returned to the vessel;

(v) measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) ensure the average sink rate is at a minimum of 0.3 m/s;

(ii) report daily to the fishery manager;

(iii) ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the conclusion of the season.

Protocol B:

B1. The vessel shall, under observation by a scientific observer:(i) set a minimum of five longlines of the maximum length to be used in theConvention Area with a minimum of four bottle tests (see paragraphs B5 to B9)on the middle one-third of the longline;

(ii) randomize bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iii) calculate an individual sink rate for each bottle test, where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 10 m;

(iv) this sink rate shall be at a minimum rate of 0.3 m/s;

(v) if the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded;

(vi) all equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to maintain the exemption to paragraph 3

[3] Except for waters adjacent to the Kerguelen and Crozet Islands

[4] Except for waters adjacent to the Prince Edward Islands

of Conservation Measure 25–02, regular line sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(ii) every seven days place at least four bottle tests on a single longline to determine any sink rate variation along the line;

(iii) randomize bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iv) calculate an individual sink rate for each bottle test;

(v) measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 10 m.

B3. The vessel shall whilst operating under this exemption:

(i) ensure that all longlines are weighted to achieve a minimum line sink rate of 0.3 m/s at all times;

(ii) report daily to its national agency on the achievement of this target;

(iii) ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the conclusion of the season.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 10 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle[5] (buoyancy about 0.7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point (terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed at night. A piece of waterproof paper with a unique identifying number large enough to be read from a few meters away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline[6], midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t2 in seconds[7]. The result of the test is calculated as follows:

Line sink rate = 10 / (t2 - t1)

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

CONSERVATION MEASURE 24–03 (2003)

Experimental Integrated Line-Weighting Trials in Statistical Subareas 88.1 and 88.2 in the 2003/04 Season

The Commission,

Noting the advice of the Scientific Committee and the desire to resolve line weighting issues for autoline vessels in the Convention Area, and the proposal to undertake a comprehensive trial to further resolve this issue from Australia and New Zealand in Statistical Subareas 88.1 and 88.2,Accepting the need to have two specified vessels use longlines that will not meet the normal sink rate requirements during these trials,Agrees to adopt the following conservation measure to allow the trials to occur only on the specified agreed vessels pursuant to the experimental design put forward by the Scientific Committee. In respect of fishing in Statistical Subareas 88.1 and 88.2, paragraphs 1 and 2 of Conservation Measure 25–02, protocols A2, A3, B2, and B3 of Conservation Measure 24–02, paragraph 8 of Conservation Measure 41–09, and paragraph 7 of Conservation Measure 41–10 shall not apply to the FV *Janas*[8] and the FV *Avro Chieftain*[9] whilst these vessels comply with the following experimental protocol.

1. The CCAMLR Scientific Observer or the national observer shall observe all sets of longlines during the trial (100% coverage of sets).

2. Vessels shall deploy two streamer lines on all sets of longlines during the trial. Streamer lines shall be deployed on either side of the longline. The windward streamer will be of the same specification as that detailed in the Appendix to Conservation Measure 25–02. The leeward streamer must be as close as possible to that specification, recognising that modifications will be needed to prevent entanglement of the two streamer lines and the vessels in the trial shall have operational discretion to avoid this.

3. The CCAMLR Scientific Observer shall provide a detailed description of the leeward streamer line use and construction in their cruise report.

4. One of the observers shall determine during every trial set whether seabirds of any species enter the 'risk zone' near vessels. The risk zone is defined as:

(i) up to 100 m astern of the vessel;

(ii) up to 10 m either side of the setting direction of the longline;

(iii) up to 10 m above the longline.

5. Whenever a seabird is sighted in the risk zone during a set, the observer shall immediately inform the officer in charge of the setting operation who shall immediately begin firing a bird scaring gas cannon until such time that the seabird(s) leave the prescribed area. The gas cannon shall be fired on a randomized cycle with a firing frequency of at least two times every three minutes.

6. If, on firing the gas cannon three times, seabirds remain in the risk zone, the vessel shall:

(i) if the seabird(s) is/are an albatross (all species) or giant petrel (both species) the vessel shall immediately deploy external weights on unweighted longlines (but not on integrated weight longlines) at such a rate as to achieve a 0.3 m/s line sink rate (~5 kg per 50 m) until such time that the seabird(s) leaves the prescribed area; or, alternatively

(ii) if the seabird(s) is not a species of albatross or giant petrel, the vessel may continue the trial until such time as the seabird catch limits, for species other than in (i) above, prescribed in Annex 24–03/A are reached.

7. If either the second streamer line described in paragraph 2 above, or the gas cannon described in paragraph 6 above are not able to be operated, the trials shall cease immediately until such time as they are able to be deployed again.

8. If any one of the seabird by-catch limits in Annex 24–03/A is reached, the vessel shall revert to fishing under the requirements of Conservation Measure 41–09, Conservation Measure 41–10, Conservation Measure 25–02 and Conservation Measure 24–02.

The by-catch limits for seabirds caught[10] during these trials are:

[5] A plastic water bottle that has a hard plastic screw-on 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[6] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[7] Binoculars will make this process easier to view, especially in foul weather.

[8] Subject to a license being issued by the Flag StateANNEX 24–03/A

[9] Where the number of birds caught is defined in SC-CAMLR-XXII, Annex 5, paragraphs 6.214 to 6.217.

[10] Subject to a license being issued by the Flag StateANNEX 24–03/A

(i) 50 Antarctic petrels; and/or

(ii) 20 individuals of all other non-albatross or non-giant petrel species; and/or

(iii) any one of either of the giant petrel species or any one of any albatross species.

CONSERVATION MEASURE 25–02 (2003)[11,12]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set, and Recognizing that in certain subareas and divisions of the Convention Area there is also a high risk that seabirds will be caught during line hauling,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that hooklines[13] sink beyond the reach of seabirds as soon as possible after they are put in the water.

2. Vessels using autoline systems should add weights to the hookline or use integrated weight hooklines while deploying longlines. Integrated weight (IW) longlines of a minimum of 50 g/m or attachment to non-IW longlines of 5 kg weights at 50 to 60 m intervals are recommended.

3. Vessels using the Spanish method of longline fishing should release weights before line tension occurs; weights of at least 8.5 kg mass shall be used, spaced at intervals of no more than 40 m, or weights of at least 6 kg mass shall be used, spaced at intervals of no more than 20 m.

4. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight[14,15]. During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

5. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided. Any such discharge shall take place only on the opposite side of the vessel to that where longlines are hauled. For vessels or fisheries where there is not a requirement to retain offal on board the vessel, a system shall be implemented to remove fish hooks from offal and fish heads prior to discharge.

6. Vessels which are so configured that they lack on-board processing facilities or adequate capacity to retain offal on board, or the ability to discharge offal on the opposite side of the vessel to that where longlines are hauled, shall not be authorized to fish in the Convention Area.

7. A streamer line shall be deployed during longline setting to deter birds from approaching the hookline. Specifications of the streamer line and its method of deployment are given in the appendix to this measure.

8. A device designed to discourage birds from accessing baits during the haul of longlines shall be employed in those areas defined by CCAMLR as average-to-high or high (Level of Risk 4 or 5) in terms of risk of seabird by-catch. These areas are currently Subareas 48.3, 58.6 and 58.7 and Divisions 58.5.1 and 58.5.2.

9. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

APPENDIX TO CONSERVATION MEASURE 25–02

1. The aerial extent of the streamer line, which is the part of the line supporting the streamers, is the effective seabird deterrent component of a streamer line. Vessels are encouraged to optimize the aerial extent and ensure that it protects the hookline as far eastern of the vessel as possible, even in crosswinds.

2. The streamer line shall be attached to the vessel such that it is suspended from a point a minimum of 7 m above the water at the stern on the windward side of the point where the hookline enters the water.

3. The streamer line shall be a minimum of 150 m in length and include an object towed at the seaward end to create tension to maximize aerial coverage. The object towed should be maintained directly behind the attachment point to the vessel such that in crosswinds the aerial extent of the streamer line is over the hookline.

4. Branched streamers, each comprising two strands of a minimum of 3 mm diameter brightly colored plastic tubing6 or cord, shall be attached no more than 5 m apart commencing 5 m from the point of attachment of the streamer line to the vessel and thereafter along the aerial extent of the line. Streamer length shall range between minimums of 6.5 m from the stern to 1 m for the seaward end. When a streamer line is fully deployed, the branched streamers should reach the sea surface in the absence of wind and swell. Swivels or a similar device should be placed in the streamer line insuch a way as to prevent streamers being twisted around the streamer line. Each branched streamer may also have a swivel or other device at its attachment point to the streamer line to prevent fouling of individual streamers.

5. Vessels are encouraged to deploy a second streamer line such that streamer lines are towed from the point of attachment each side of the hookline. The leeward streamer line should be of similar specifications (in order to avoid entanglement the leeward streamer line may need to be shorter) and deployed from the leeward side of the hookline.

CONSERVATION MEASURE 25–03 (2003)[16]

Minimization of the Incidental Mortality of Seabirds and Marine Mammals in the Course of Trawl Fishing in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of or injury to seabirds and marine mammals from fishing operations,

Adopts the following measures to reduce the incidental mortality of or injury to seabirds and marine mammals during trawl fishing.

1. The use of net monitor cables on vessels in the CCAMLR Convention Area is prohibited.

2. Vessels operating within the Convention Area should at all times arrange the location and level of lighting so as to minimize illumination directed out from the vessel, consistent with the safe operation of the vessel.

3. The discharge of offal shall be prohibited during the shooting and hauling of trawl gear.

4. Nets should be cleaned prior to shooting to remove items that might attract birds.

[11] Except for waters adjacent to the Kerguelen and Crozet Islands

[12] Except for waters adjacent to the Prince Edward Islands

[13] Hookline is defined as the groundline or mainline to which the baited hooks are attached by snoods.

[14] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. A copy of the algorithm for calculating these times is available from the Secretariat. All times, whether for ship operations or observer reporting, shall be referenced to GMT.

[15] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[16] Except for waters adjacent to the Kerguelen and Crozet Islands

5. Vessels should adopt shooting and hauling procedures that minimize the time that the net is lying on the surface of the water with the meshes slack. Net maintenance should, to the extent possible, not be carried out with the net in the water.

6. Vessels should be encouraged to develop gear configurations that will minimize the chance of birds encountering the parts of the net to which they are most vulnerable. This could include increasing the weighting or decreasing the buoyancy of the net so that it sinks faster, or placing colored streamers or other devices over particular areas of the net where the mesh sizes create a particular danger to birds.

CONSERVATION MEASURE 32–09 (2003)

Prohibition of Directed Fishing for *Dissostichus* spp. Except in accordance with Specific Conservation Measures in the 2003/04 SeasonThe Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subarea 48.5 is prohibited from 1 December 2003 to 30 November 2004.

CONSERVATION MEASURE 32–13 (2003)

Prohibition of Directed Fishing for *Dissostichus* eleginoidesin Statistical Division 58.5.1 outside Areas of National JurisdictionTaking of *Dissostichus* eleginoides, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.5.1 outside areas of national jurisdiction from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* eleginoides stock in this division is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–14 (2003)

Prohibition of Directed Fishing for Dissostichus eleginoides in Statistical Division 58.5.2 East of 79°20'E and outside the EEZ to the West of 79°20'E

Taking of *Dissostichus eleginoides*, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.5.2 east of 79°20'E and outside the EEZ to the west of 79°20'E from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* eleginoides stock in this division is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–15 (2003)

Prohibition of Directed Fishing for Dissostichus spp. in Statistical Subarea 88.2 North of 65° South

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 88.2 north of 65° South from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this subarea is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–16 (2003)

Prohibition of Directed Fishing for Dissostichus spp. in Statistical Subarea 88.3

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 88.3 from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this subarea is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–17 (2003)

Prohibition of Directed Fishing for Electrona carlsbergi in Statistical Subarea 48.3

Taking of *Electrona carlsbergi*, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 48.3 from 1 December 2003. This prohibition shall apply until at least such time that a survey of the Electrona carlsbergi stock in this subarea is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee; or a research plan for an exploratory fishery is submitted and approved by the Scientific Committee consistent with Conservation Measure 24–01.

CONSERVATION MEASURE 33–02 (2003)

Limitation of By-catch in Statistical Division 58.5.2 in the 2003/04 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2003/04 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2003/04 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tons, the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tons, the by-catch of *Macrourus* spp. shall not exceed 360 tons and the by-catch of skates and rays shall not exceed 120 tons. For the purposes of this measure, '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tons in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus*, *Lepidonotothen squamifrons*, *Macrourus* spp. or skates and rays is equal to, or greater than 2 tons, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles[17] of the location where the by-catch exceeded 2 tons for a period of at least five days[18]. The location where the by-catch exceeded 2 tons is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or

[17]This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[18]The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

greater than 1 ton, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles[19] of the location where the by-catch exceeded 1 ton for a period of at least five days[20]. The location where the by-catch exceeded 1 ton is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

CONSERVATION MEASURE 33–03 (2003)[21]

Limitation of By-catch in New and Exploratory Fisheries in the 2003/04 Season

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2003/04 season except where specific by-catch conservation measures apply.

2. The catch limits for all by-catch species are set out in Annex 33–03/A. Within these catch limits, the total catch of by-catch species in any SSRU shall not exceed the following limits:

•skates and rays 5% of the catch limit of *Dissostichus* spp. or 50 tons whichever is greater;

•*Macrourus* spp 16% of the catch limit for *Dissostichus* spp. or 20 tons, whichever is greater;

•all other species combined 20 tons.

3. For the purposes of this measure '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

4. If the by-catch of any one species is equal to or greater than 1 ton in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles[22] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 ton for a period of at least five days[23]. The location where the by-catch exceeded 1 ton is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

CONSERVATION MEASURE 41–01 (2003) [24,25]

General Measures for Exploratory Fisheries for Dissostichus spp. in the Convention Area in the 2003/04 Season

The Commission hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any small-scale research unit (SSRU) shall cease when the reported catch reaches the specified catch limit [26] and that SSRU shall be closed to fishing for the remainder of the season.

3. In order to give effect to paragraph 2 above:

(i) the precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul for the purposes of catch and effort reporting;

(ii) the precise geographic position of a haul/set in longline fisheries will be determined by the center-point of the line or lines deployed for the purposes of catch and effort reporting;

(iii) the vessel will be deemed to be fishing in any SSRU from the beginning of the setting process until the completion of the hauling of all lines;

(iv) catch and effort information for each species by SSRU shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(v) the Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus* eleginoides and *Dissostichus* mawsoni combined in any SSRU is likely to reach the specified catch limit, and of the closure of that SSRU when that limit is reached. Upon such notification from the Secretariat, all fishing gear shall be hauled immediately. No part of a trawl path may lie within a closed SSRU and no part of a longline may be set within a closed SSRU.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 33–03.

5. The total number and weight of *Dissostichus* eleginoides and *Dissostichus* mawsoni discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2003/04 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 41–01/A), Research Plan (Annex 41–01/B) and Tagging Program (Annex 41–01/C) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to 31 August 2004 shall be reported to CCAMLR by 30 September 2004 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG-FSA) in 2004. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for theconsideration of WG-FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

ANNEX 41–01/A

DATA COLLECTION PLAN FOR EXPLORATORY FISHERIES

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 23–01) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 23–04 and 23–05).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish

[19] Except for waters adjacent to the Kerguelen and Crozet Islands

[20] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission

[21] Except for waters adjacent to the Kerguelen and Crozet Islands

[22] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[23] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[24] Except for waters adjacent to the Kerguelen and Crozet Islands

[25] Except for waters adjacent to the Prince Edward Islands

[26] Unless otherwise specified, the catch limit for *Dissostichus* spp. shall be 100 tons in any SSRU except in respect of Subarea 88.2.

fisheries will be collected. These include:

(i) position, date and depth at the start and end of every haul;

(ii) haul-by-haul catch and catch per effort by species;

(iii) haul-by-haul length frequency of common species;

(iv) sex and gonad state of common species;

(v) diet and stomach fullness;

(vi) scales and/or otoliths for age determination;

(vii) number and mass by species of by-catch of fish and other organisms;

(viii) observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) position and sea depth at each end of every line in a haul;

(ii) setting, soak, and hauling times;

(iii) number and species of fish lost at surface;

(iv) number of hooks set;

(v) bait type;

(vi) baiting success (%);

(vii) hook type;

(viii) sea and cloud conditions and phase of the moon at the time of setting the lines.

ANNEX 41–01/B

RESEARCH PLAN FOR EXPLORATORY FISHERIES

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 and Figure 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, shall be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tons of catch for longlining, whichever trigger level is achieved first, or 10 tons of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) In SSRUs A, B, C, E, and G in Statistical Subarea 88.1 where fishable seabed area is less that 15 000km2, paragraphs 3(ii), 3(iii) and 3(iv) do not apply and on completion of 10 research hauls the vessel may continue to fish within the SSRU.

4. To be designated as a research haul:

(i) each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC-CAMLR-XI),

Annex 5, Appendix H, Attachment E, paragraph 4);

(iii) each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 41–01/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies (paragraphs 2(iv) to 2(vi) of Annex 41–01/A)). Where more than 100 fish are caught, amethod for randomly subsampling the fish should be applied.

ANNEX 41–01/C

TAGGING PROGRAM FOR EXPLORATORY FISHERIES

(i) Each longline vessel participating in exploratory fisheries for *Dissostichus* spp. shall tag and release [27] *Dissostichus* spp. at a rate of one toothfish per ton of green weight catch throughout the season. Vessels shall only discontinue tagging after they have tagged 500 toothfish, or leave the fishery having tagged one toothfish per ton of green weight caught.

(ii) The program should target small toothfish under 100 cm in total length, although larger toothfish should be tagged if necessary in order to meet the tagging requirement of one toothfish per ton of green weight catch. All released toothfish should be double-tagged and releases should cover as broad a geographical area as possible.

(iii) All tags shall be clearly imprinted with a unique serial number and a return address so that the origin of tags can be traced in the case of recapture of the tagged toothfish. All relevant tag data and any tag recaptures of toothfish in the fishery shall be reported electronically to the CCAMLR Data Manager within two months of the vessel departing these fisheries.

CONSERVATION MEASURE 41–02 (2003)

Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.Catch limit 2. The total catch of *Dissostichus* eleginoides in Statistical Subarea 48.3 in the 2003/04 season shall be limited to 4 420 tons.Season 3. For the purpose of the longline fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2004 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2002/03 season. This extension to the season will also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel. By-catch 4. The by-catch of crab shall be counted against the catch limit in the crab fishery in Statistical Subarea 48.3.

5. The by-catch of finfish in the fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3 in the 2003/04 season shall not exceed 221 tons for skates and rays and 221 tons for *Macrourus* spp. For the purpose of these

[27] In accordance with the CCAMLR Tagging Protocol for exploratory fisheries which is available from theSecretariat.

by-catch limits, skates and rays shall be counted as a single species.

6. If the by-catch of any one species is equal to or greater than 1 ton in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles1 distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 ton for a period of at least five days2. The location where the by-catch exceeded 1 ton is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimize the incidental mortality of seabirds in the course of fishing. Observers 8. Each vessel participating in this fishery shall have at least one scientificobserver appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.Data: catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* eleginoides and by-catch species are defined as any species other than *Dissostichus* eleginoides.

11. The total number and weight of *Dissostichus* eleginoides discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data:

biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

CONSERVATION MEASURE 41–04 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 48.6 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Argentina, Japan, Namibia, New Zealand, Spain and South Africa. The fishery shall be conducted by Argentine, Japanese, Namibian, New Zealand, Spanish and South African flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2003/04 season shall not exceed a precautionary catch limit of 455 tons north of 60°S and 455 tons south of 60°S.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2003/04 season is defined as the period from 1 March to 31 August 2004 north of 60°S and the period from 15 February to 15 October 2004 south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting). Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

6. Longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

7. There shall be no offal discharge in this fishery.Observers 8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04

season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out

in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

CONSERVATION MEASURE 41–05 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Division 58.4.2 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2004:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory longline fishery by Argentina, Australia, Ukraine, Russia and the USA. The fishery shall be conducted by Argentine, Australian, Ukrainian, Russian and US flagged vessels using longlines only.Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2003/04 season shall not exceed a precautionary catch limit of 500 tons, of which no more 100 tons shall be taken in any one of the five small-scale research units (SSRUs) defined in Conservation Measure 41–01, Annex B for Division 58.4.2.

3. In order to distribute effort throughout the division, to ensure that sufficient data are collected from toothfish populations in various areas, and also to afford some protection to the benthic communities, either the eastern or western half (5° of longitude) of each SSRU in which fishing takes place will be defined as 'open' at the discretion of a 'designating vessel's' master according to the actions specified below. The other half of the SSRU shall remain closed to fishing.

4. On entry to an SSRU a vessel must:

(i) notify the Secretariat that is has entered that SSRU with an intention to fish before exiting;

(ii) seek notification from the Secretariat of which half of the SSRU is open or that the SSRU remains to be designated according to the steps below;

(iii) determine from the Secretariat whether it is the first vessel to enter that SSRU and therefore establishes a 'designating vessel right' to determine which half of the SSRU will be open;

(iv) should the vessel be the 'designating vessel' in that SSRU then

(a) it should choose which half is to be open;

(b) immediately notify the Secretariat of its choice prior to its first line being set;

(v) if a 'designating vessel' for an SSRU exits that SSRU without fishing then it should notify immediately the Secretariat and forfeit the right as a 'designating vessel' for that SSRU;

(vi) if the vessel is not the 'designating vessel' then it must not fish until the 'designating vessel' has selected the half of the SSRU to be opened. Season 5. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004.

Fishing operations

6. The exploratory longline fishery for *Dissostichus* spp. in Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

7. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities. By-catch 8. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 9. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

10. In Statistical Division 58.4.2, longlines may be set during daylight hours only if the vessel demonstrates a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Should a total of three (3) seabirds be caught, the vessel shall immediately revert to night setting in accordance with Conservation Measure 25–02.

11. There shall be no offal discharge in this fishery.Observers 12. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.Research 13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:

catch/effort

14. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

CONSERVATION MEASURE 41–06 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. on Elan Bank (Statistical Division 58.4.3a) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory fishery by Argentina, Australia, Ukraine, Russia and the USA. The fishery shall be conducted by Argentine, Australian, Ukrainian, Russian and US flagged vessels using longlines only and one Australian flagged vessel using trawl only. No more than one vessel per country shall fish at any one time.Catch limit 2. The total catch of *Dissostichus* spp. on Elan Bank (StatisticalDivision 58.4.3a) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 250 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner.

4. For the purpose of the trawl fishery for *Dissostichus* spp. on Elan Bank(Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimize the incidental mortality of seabirds in the course of fishing.

7. The fishery on Elan Bank (Statistical Division 58.4.3a) outside areas ofnational jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

8. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2003/04 fishing season.Observers 9. Each vessel participating in this fishery shall have at

least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

CONSERVATION MEASURE 41–07 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. On BANZARE Bank (Statistical Division 58.4.3b) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory fishery by Argentina, Australia, Ukraine, Russia and the USA. The fishery shall be conducted by Argentine, Australian, Ukrainian, Russian and US flagged vessels using longlines only and one Australian flagged vessel using trawl only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 300 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner.

4. For the purpose of the trawl fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimize the incidental mortality of seabirds in the course of fishing.

7. The fishery on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

8. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2003/04 fishing season.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04

season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

CONSERVATION MEASURE 41–08 (2003)

Limits on the fishery for Dissostichus eleginoides in Statistical Division 58.5.2 in the 2003/04 Season

Access 1. The fishery for *Dissostichus* eleginoides in Statistical Division 58.5.2 shall be conducted by vessels using trawls or longlines only.Catch limit 2. The total catch of *Dissostichus* eleginoides in Statistical Division 58.5.2 in the 2003/04 season shall be limited to 2 873 tons west of 79°20'E. Season 3. For the purpose of the trawl fishery for *Dissostichus* eleginoides in Statistical Division 58.5.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner. For the purpose of the longline fishery for *Dissostichus* eleginoides in Statistical Division 58.5.2, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2004 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2002/03 season. This extension to the season will also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel.By-catch 4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measures 25–02 and 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

7. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Annex 41–08/A;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Annex 41–08/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 41–08/A, the target species is *Dissostichus* eleginoides and by-catch species are defined as any species other than *Dissostichus* eleginoides.

9. The total number and weight of *Dissostichus* eleginoides discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data:

biological

10. Fine-scale biological data, as required under Annex 41–08/A, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

ANNEX 41–08/A

DATA REPORTING SYSTEM

A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Dissostichus* eleginoides and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of *Dissostichus* eleginoides and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus* eleginoides and by-catch species:

(a) length measurements shall be to the nearest centimeter below;

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

CONSERVATION MEASURE 41–09 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Argentina, Japan, Republic of Korea, New Zealand, Norway, Russia, South Africa, Spain, Ukraine, UK, USA and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, one (1) Japanese, two (2) Korean, six (6) New Zealand, one (1) Norwegian, two (2) Russian, two (2) South African, two (2) Spanish, three (3) Ukrainian, one (1) UK, two (2) US and two (2) Uruguayan flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2003/04 season shall not exceed a precautionary catch limit of 3 250 tons. Catch limits for each of the SSRUs, as defined in Conservation Measure 41–01, Annex B for Subarea 88.1, shall be as follows: A - 0 tons; B - 80 tons; C - 223 tons; D - 0 tons; E -57 tons; F - 0 tons; G - 83 tons; H - 786 tons; I - 776 tons; J - 316 tons; K - 749 tons; L - 180 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp.in Statistical Subarea 88.1, the 2003/04 season is defined as the period from 1 December 2003 to 31 August 2004.

Fishing operations

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.1, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

8. There shall be no offal discharge in this fishery.

Observers 9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:

catch/effort

13. For the purpose of implementing this conservation measure in the 2003/04

season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation[28].

Discharge 16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) garbage;

(iii) food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) poultry or parts (including egg shells); or

(v) sewage within 12 n miles of land or ice shelves, or sewage while the ship is traveling at a speed of less than 4 knots.

Additional elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

18. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

CONSERVATION MEASURE 41–10 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Argentina, Republic of Korea, New Zealand, Norway, Russia, South Africa and Ukraine. The fishery shall be conducted by a maximum in the season of two (2) Argentine, two (2) Korean, six (6) New Zealand, one (1) Norwegian, two (2) Russian, two (2) South African and three (3) Ukrainian flagged vessels using longlines only.Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2003/04 season shall not exceed a precautionary catch limit of 375 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2003/04 season is defined as the period from 1 December 2003 to 31 August 2004.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02, and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.2, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

8. There shall be no offal discharge in this fishery. Observers 9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:

catch/effort

13. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

[28] As notified to the Secretariat in accordance with Conservation Measure 21–02, paragraph 2(iv).

(i) oil or fuel products or oily residues into the sea, except as permitted

in Annex I of MARPOL 73/78;

(ii) garbage;

(iii) food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) poultry or parts (including egg shells); or

(v) sewage within 12 n miles of land or ice shelves, or sewage while the ship is traveling at a speed of less than 4 knots.

Additional elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

CONSERVATION MEASURE 41–11 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Division 58.4.1 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2004:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.1 shall be limited to the exploratory longline fishery by Argentina, Australia and the USA. The fishery shall be conducted by Argentine, Australian and US flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.1 in the 2003/04 season shall not exceed a precautionary catch limit of 800 tons, of which no more than 200 tons shall be taken in any one of the four small-scale research units (SSRUs) identified in paragraph 3.

3. Division 58.4.1 shall be divided into eight SSRUs as detailed in Annex B of Conservation Measure 41–01. Of these eight SSRUs, A, C, E and G shall have a catch limit of 200 tons of *Dissostichus* spp. SSRUs B, D, F and H shall have a catch limit of zero tons of *Dissostichus* spp. In addition, fishing will be prohibited in depths less than 550 m in all SSRUs in order to protect the benthic communities.

Season 4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004.

Fishing operations

5. The exploratory longline fishery for *Dissostichus* spp. in Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6. By-catch 6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 7. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 2 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

8. In Statistical Division 58.4.1, longlines may be set during daylight hours only if the vessel demonstrates a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Should a total of three (3) seabirds be caught, the vessel shall immediately revert to night setting in accordance with Conservation Measure 25–02.

9. There shall be no offal discharge in this fishery. Observers 10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:

catch/effort

12. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out

in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

13. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

14. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

CONSERVATION MEASURE 42–01 (2003)

Limits on the Fishery for Champsocephalus gunnari in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period 1 March to 31 May (spawning period).

Catch limit 3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2003/04 season shall be limited to 2 887 tons. The total catch of *Champsocephalus gunnari* taken in the period 1 March to 31 May shall be limited to 722 tons.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant1. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days[29]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season 5. For the purpose of the trawl fishery for Champsocephalus gunnari in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

[29] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

By-catch 6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–01. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 33–01.

•is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or

•is equal to or greater than 2 tons,

then the fishing vessel shall move to another location at least 5 n miles distant1. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 33–01 exceeded 5% for a period of at least five days[30]. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of the fishery.

8. Should any vessel catch a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2003/04 season.

Observers 9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data:

biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research 13. Each vessel operating in this fishery during the period 1 March to 31 May 2004 shall conduct twenty (20) research trawls in the manner described in Annex 42–01/A.

ANNEX 42–01/A

RESEARCH TRAWLS DURING SPAWNING SEASON

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between 1 March and 31 May shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area. These shall be distributed between the four sectors illustrated in Figure 1: four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari*.

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

CONSERVATION MEASURE 42–02 (2003)

Limits on the Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 2003/04 Season

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari*, the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) starting at the point where the meridian of longitude 72°15'E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25'S;

(ii) then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40'S and the meridian of longitude 76°E;

(iv) then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30'E;

(vi) then southwesterly along the geodesic to the point of commencement.

3. A chart illustrating the above definition is appended to this conservation measure (Annex 42–02/A). Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari*.

Catch limit 4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2003/04 season shall be limited to 292 tons.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than the specified minimum legal total length, the fishing vessel shall move to another fishing location at least 5 n miles distant[31]. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days[32]. The location where the

[30] § The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[31] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[32] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. From the 1 December 2003 to 30 April 2004 the minimum legal total length shall be 240 mm. From 1 May 2004 to 30 November 2004 the minimum legal length shall be 290 mm.

Season 6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner. By-catch 7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.Observers 9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Annex 42–02/B;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Annex 42–02/B. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Annex 42–02/B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data:

biological

12. Fine-scale biological data, as required under Annex 42–02/B, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

ANNEX 42–02/B

DATA REPORTING SYSTEM

A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version.

These data shall be submitted to the CCAMLR Secretariat not later than onemonth after the vessel returns to port;

(ii) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) length measurements shall be to the nearest centimeter below;

(b) representative samples of length composition shall be taken from eachfine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

CONSERVATION MEASURE 43–02 (2003)

Limits on the Exploratory Fishery for Macrourus spp. on Elan Bank (Statistical Division 58.4.3a) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Macrourus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by one Australian flagged vessel.

Catch limit 2. The total catch of *Macrourus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 26 tons.

Season 3. For the purpose of the exploratory trawl fishery for *Macrourus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004 , or until the catch limit is reached, whichever is sooner.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

7. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in

Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Macrourus* spp. and by-catch species are defined as any species other than *Macrourus* spp. Any catch of *Dissostichus* spp. shall be subtracted from the catch limit for *Dissostichus* spp. specified in Conservation Measure 41–06.

Data:

biological

9. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery based research in accordance with the research plan described in Conservation Measure 41–01, Annex B.

CONSERVATION MEASURE 43–03 (2003)

Limits on the Exploratory Fishery for Macrourus spp. On BANZARE Bank (Statistical Division 58.4.3b) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Macrourus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by one Australian flagged vessel.

Catch limit 2. The total catch of *Macrourus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 159 tons.

Season 3. For the purpose of the exploratory trawl fishery for *Macrourus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

7. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Macrourus* spp. and by-catch species are defined as any species other than *Macrourus* spp. Any catch of *Dissostichus* spp. shall be subtracted from the catch limit for *Dissostichus* spp. specified in Conservation Measure 41–07.

Data:

biological

9. Fine-scale biological data, as required under Conservation

Measure 23–05, shall be collected and recorded. Such data shall bereported in accordance with the Scheme of International Scientific Observation.

Research 10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01, Annex B.

Conservation Measure 43–04 (2003)

Limits on the Exploratory Fishery for Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus and Pleuragramma antarcticum in Statistical Division 58.4.2 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2004:

Access 1. Fishing for *Chaenodraco wilsoni*, *Lepidonotothen kempi*, *Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Russia.The fishery shall be conducted by one Russian-flagged vessel using trawls only.

Catch limit 2. The total catch of all species in the 2003/04 season shall not exceed a precautionary catch limit of 2 000 tons.

3. The catch of *Chaenodraco wilsoni* in the 2003/04 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 43–04/A of this conservation measure, and shall not exceed 1 000 tons.

4. The catches of *Lepidonotothen kempi*, *Trematomus eulepidotus* and *Pleuragramma antarcticum* in the 2003/04 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 43–04/A of this conservation measure, and shall not exceed 500 tons for any one species.

5. Any *Dissostichus* spp. or *Macrourus* spp. caught during the directed fishery for the above species shall be deducted from the catches of these species authorized in Conservation Measure 41–05.

Season 6. For the purpose of the exploratory trawl fishery for *Chaenodraco wilsoni, Lepidonotothen kempi*, *Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

By-catch 7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 9. The vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 23–03. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–03, the target species are *Chaenodraco wilsoni*, *Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* and by-catch species are defined as any species other than these species.

Data:

biological

12. Fine-scale biological data, as required under Conservation Measure 23–05 shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research 13. The vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research and Data Collection Plans described in Annex 43–04/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

ANNEX 43–04/A

RESEARCH AND DATA COLLECTION PLANS

1. The small-scale research units (SSRUs) for this fishery will be those specified in Annex B of Conservation Measure 41–01.

2. The vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities once 10 tons of any one species have been caught, irrespective of the number of hauls required:

(i) a minimum of 20 hauls must be made within the SSRU and must collectively satisfy the criteria specified in subparagraphs (ii) to (iv);

(ii) each haul must be separated by not less than 5 n miles from any other haul, distance to be measured from the geographical mid-point of each haul;

(iii) each haul shall comprise at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area*(SC-CAMLR-XI, Annex 5, Appendix H, Attachment E, paragraph 4);

(iv) all data specified in the paragraph 4 of this annex shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and biological characteristics obtained from 30 fish, where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

3. The requirement to undertake the above research activities applies irrespective of the period over which the trigger levels of 10 tons of catch in any SSRU are achieved during the 2003/04 fishing season. The research activities must commence immediately the trigger levels have been reached and must be completed before the vessel leaves the SSRU.

4. In each SSRU and in locations where the bottom depth is 280 m or less:

(i) a maximum total of 20 commercial bottom trawls may be conducted in no more than 10 locations, but with no more than four bottom trawls in any one location;

(ii) each location must be at least 5 n miles distant from any other location;

(iii) at each location trawled, three separate samples will be taken with a beam trawl in the vicinity of the commercial trawl track to assess the benthos present and compare with the benthos brought up in the commercial trawl;

(iv) catches from this program will not count towards the value that triggers the 20 research shots in an SSRU as defined in paragraph 2 above.

5. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR Scientific Observers Manual:

(i) position, date and depth at the start and end of every haul;

(ii) haul-by haul catch and catch per effort by species;

(iii) haul-by haul length frequency of common species;

(iv) sex and gonad state of common species;

(v) diet and stomach fullness;

(vi) scales and/or otoliths for age determination;

(vii) by-catch of fish and other organisms;

(viii) observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

CONSERVATION MEASURE 52–01 (2003)

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

Catch limit 4. The total catch of crab in Statistical Subarea 48.3 in the 2003/04 season shall not exceed a precautionary catch limit of 1 600 tons.

5. The crab fishery shall be limited to sexually mature male crabs - all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa*, males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

Season 6. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

By-catch 7. The by-catch of *Dissostichus* eleginoides shall be counted against the catch limit in the fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. Scientific observers shall be afforded unrestricted access to the catch for statistical random sampling prior to, as well as after, sorting by the crew.

Data:

catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–02 and 23–04 the target species is crab and by-catch species are defined as any species other than crab.

Data:

biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct

fishery-based research in accordance with the data requirements described in Annex 52–01/A and the experimental harvest regime described in Conservation Measure 52–02. Data collected for the period up to 31 August 2004 shall be reported to CCAMLR by 30 September 2004 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2004. Such data collected after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

ANNEX 52–01/A

DATA REQUIREMENTS ON THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Catch and Effort Data:

Cruise Descriptions

cruise code, vessel code, permit number, year.

Pot Descriptions

diagrams and other information, including pot shape, dimensions, mesh size, funnel

position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

Biological Data:

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

cruise code, vessel code, permit number.

Sample Descriptions

date, position at start of the set, compass bearing of the set, line number.

Data

species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

CONSERVATION MEASURE 52–02 (2003)

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2003/04 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2003/04 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2003/04 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) every vessel when undertaking an experimental harvesting regime shall expend its first 200 000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 52–02/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string asthe time between start of setting and start of hauling;

(ii) vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) vessels shall not expend more than 30 000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) if a vessel returns to port before it has expended 200 000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime;

(v) after completing 200 000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2004 shall be submitted to CCAMLR by 31 August 2004.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 52–01.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 52–01.

6. Fishing vessels shall participate in the experimental harvest regime independently (i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

CONSERVATION MEASURE 61–01 (2003)

Limits on the Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 21–02 and 31–01:

Access 1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.

Catch limit 2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2003/04 season shall not exceed a precautionary catch limit of 2 500 tons.

Season 3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

Observers 4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

5. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 23–02 and 23–04, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi*.

Data:

biological

7. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research 8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 61–01/A.

Data collected pursuant to the plan for the period up to 31 August 2004 shall be reported to CCAMLR by 30 September 2004 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2004.

ANNEX 61–01/A

DATA COLLECTION PLAN FOR EXPLORATORY SQUID (MARTIALIA HYADESI) FISHERIES IN STATISTICAL SUBAREA 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 23–02; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR Scientific Observers Manual for squid fisheries will be collected. These include:

(i) vessel and observer program details (Form S1);

(ii) catch information (Form S2);

(iii) biological data (Form S3).

RESOLUTION 15/XXII

Use of Ports not Implementing the Catch Documentation Scheme for Dissostichus spp.

The Commission,

Noting that a number of Acceding States and non-Contracting Parties not participating in the Catch Documentation Scheme for *Dissostichus* spp., as set out in Conservation Measure 10–05, continue to trade in *Dissostichus* spp.;

Recognizing that these Acceding States and non-Contracting Parties thus do not participate in the landing procedures for *Dissostichus* spp. accompanied by *Dissostichus* Catch Documents;

Urges Contracting Parties,

When licensing a vessel to fish for *Dissostichus* spp. either inside the Convention Area under Conservation Measure 10–02, or on the high seas, to require, as a condition of that license, that the vessel should land catches only in States that are fully implementing the CDS; and to attach to the license[33] a list of all Acceding States and non-Contracting Parties that are fully implementing the Catch Documentation Scheme.

RESOLUTION 20/XXII

Ice-Strengthening Standards in High-Latitude Fisheries[34]

The Commission

Recognizing the unique circumstances in high-latitude fisheries, especially the extensive ice coverage which can pose a risk to fishing vessels operating in those fisheries,

Recognizing also that the safety of fishing vessels, crew and CCAMLR scientific observers is a significant concern of all Members,

Further recognizing the difficulties of search and rescue response in high-latitude fisheries,

Concerned that collisions with ice could result in oil spills and other adverse consequences for Antarctic marine living resources and the pristine Antarctic environment,

Considering that vessels fishing in high-latitude fisheries should be suitable for ice conditions,

Urges Members to license to fish in high-latitude fisheries only those of their flag vessels with a minimum ice classification standard of ICE–1C[35] which will remain current for the duration of the planned fishing activity.

Dated: December 10, 2003.

Margaret F. Hayes,

Director, Office of Oceans Affairs, Bureau of Oceans, International Environmental and Scientific Affairs, Department of State.

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BILLING CODE 3510–22–S

[33] Includes permits and authorizations

[34] Subareas and divisions south of 60°S and adjacent to the Antarctic continent.

[35] As defined in the Det Norske Veritas (DNV) Rules for Classification of Ships or an equivalent standard of certification as defined by a recognized classification authority.

DEPARTMENT OF STATE

[Public Notice 4559]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Benjamin A. Gilman International Scholarship Program

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the Benjamin A. Gilman International Scholarship Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for the purpose of administering a scholarship program for academic study by Americans outside of the United States.

Important Note: This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

This program provides grants to enable U.S. citizen undergraduate students of limited financial means to pursue academic studies abroad. Such foreign study is intended to expand understanding of other countries and cultures among U.S. students, expose citizens of other countries to Americans from diverse backgrounds, and better prepare U.S. students to assume significant roles in an increasingly global economy.

Overview

It is anticipated that, pending appropriation of funds, this grant will provide an assistance award of approximately $1,600,000 for the purpose of recruiting, selecting, and issuing grants of up to $5,000 to individuals who meet the eligibility requirements listed below toward the cost of up to one academic year of undergraduate study abroad. Subject to the availability of funding and to satisfactory performance of the organization selected, this assistance award may be renewable for two subsequent fiscal years.

The intent of the authorizing legislation for the Benjamin A. Gilman International Scholarship Program is to broaden the U.S. student population that participates in study abroad by focusing on those students who might not otherwise study outside the U.S. due to financial constraints.

The Bureau also seeks to encourage participating students and their

institutions to choose non-traditional study-abroad locations and to help under-represented U.S. institutions offer and promote study-abroad opportunities for their students. These objectives should also be addressed in grant proposals.

Guidelines

The administering organization should be prepared to announce the program and solicit applications as soon as possible upon receipt of grant notification and to award scholarships to U.S. students to enable them to begin overseas study in the fall semester of 2004.

Student Eligibility: To apply for a scholarship, an applicant must:

- Be a citizen of the United States. Permanent residents of the United States are not eligible.
- Be an undergraduate student in good standing at an institution of higher education in the United States (including both two-year and four-year institutions).
- Be a recipient of federal Pell Grant funding during the academic term of his/her application.
- Be applying to, or accepted for a program of study abroad eligible for credit from the student's home institution. Proof of program acceptance is required for final award disbursement.
- Not study in a country currently under a Travel Warning issued by the United States Department of State. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. To find a list of these countries, please see *http://travel.state.gov/warnings_list.html.*

Recruitment, Application and Selection:

(1) Outreach will be made by the grantee organization to accredited institutions of higher education in the United States for the purpose of publicizing the scholarship competition. This can be achieved through direct contacts with these institutions and through participation in major education conferences and events. Emphasis will be on reaching out to a diverse pool of institutions and programs within those institutions.

(2) The selection process shall be carried out through a committee which includes representatives of accredited institutions of higher education in the United States.

(3) In ranking eligible applicants for scholarships, consideration should be given to academic excellence, financial need, diversity of the applicant pool, fields of study, proposed destination, and type and location of home institution. Preference should be given to applicants with no previous study abroad experience.

Reporting:

The grantee organization will submit quarterly reports on the number of applicants, the number of participants selected, the names of the institutions of higher education in the United States that applicants and awardees were attending at the time of application, the names of institutions sponsoring the study programs abroad, the names and locations of the institutions of higher education outside the United States that participants attended during their study program abroad, the fields of study of participants, and attrition rates. Because diversity is an important program goal, the grantee should attempt to collect age, ethnic, gender, and disability data from applicants and from those selected for awards, in keeping with Federal guidelines on the solicitation of such information. Additionally, the Bureau of Educational and Cultural Affairs may request other periodic and ad hoc reports.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs are limited by Bureau policy to $60,000. The Bureau intends to make one award not to exceed $1,600,000. Accordingly, institutions with less than four years experience are not encouraged to apply. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. Applicants should budget the maximum possible amount for scholarships and keep administrative and overhead costs to a minimum. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) *Administrative:* Salaries and benefits and other direct administrative expenses such as postage, phone, printing and office supplies.

(2) *Program:* Participant expenses, which may include institutional fees, travel expenses, tuition; expenses related to review panels, including travel and per-diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/A–04–14.*

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Educational Information and Resources Branch (ECA/A/S/A), Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547; telephone 202–619–5434; fax 202–401–1433; e-mail *advise@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Branch Chief Phillip Ives on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, February 6, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service

Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 15 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–04–14, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

Please note: The following is being communicated for informational purposes only and does not directly apply to this solicitation or program. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. The work plan should specify target dates for objectives such as application deadlines, notifications, and provision of funds to participants.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content. Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, including, but not limited to diversity in applicant pool, type and location of home institution, study destinations, and fields of study.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Electronic databases should be compatible with the Bureau's systems.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity such as alumni tracking and programming.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate

reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the International Academic Opportunity Act of 2000.

Notice

Funding for this program is subject to final Congressional action and the appropriation of FY–2004 funds. The actual level of funding for the Gilman Program was $1.5 million in FY–2002 and $1,575,000 in FY–2003. Awards made will be subject to periodic reporting and evaluation requirements. The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 10, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31230 Filed 12–17–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice #4530]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, January 15, 2004 from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at (703) 875–7109 before Wednesday, January 7th, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina Pinzino (703) 875–7109.

Dated: December 8, 2003.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, U.S. Department of State.

[FR Doc. 03–31231 Filed 12–17–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 3, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0240.

Form Number: IRS Form 6118.

Type of Review: Extension.

Title: Claim for Refund of Income Tax Return Preparer Penalties.

Description: Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeeping: 10,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	17 min.
Preparing the form	11 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 10,400 hours.

OMB Number: 1545–0951.

Form Number: IRS Forms 5434 and 5434–A.

Type of Review: Extension.

Title: Form 5434: Application for Enrollment; and Form 5434–A: Application for Renewal of Enrollment.

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Respondent/ Recordkeeper: 27 minutes.

Frequency of Response: Other (once every 3 years).

Estimated Total Reporting/ Recordkeeping Burden: 3,800 hours.

OMB Number: 1545–1858.

Notice Number: Notice 2003–67.

Type of Review: Extension.

Title: Notice on Information Reporting for Payments in Lieu of Dividends.

Description: This notice provides guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003. The notice provides rules for brokers to use in determining honorable shares and rules for allocating transferred shares for purposes of determining payments in lieu of dividend reportable to individuals to individuals. These rules require brokers to comply with certain recordkeeping requirements to use the favorable rules for determining loanable shares and for allocating transferred shares that may give rise to payments in lieu of dividends.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 600.

Estimated Burden Hours Recordkeeper: 100 hours.

Estimated Total Recordkeeping Burden: 60,000 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–31204 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 8, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0236.

Form Number: IRS Form 11–C.

Type of Review: Extension.

Title: Occupational Tax and Registration Return for Wagering.

Description: Form 11–C is used to register persons accepting wagers (Internal Revenue Code section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (Internal Revenue Code section 4411), and to verify that the tax on wagers is reported on Form 730.

Respondents: Business or other for-profit, individuals or households, farms.

Estimated Number of Respondents/ Recordkeeping: 11,500.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	8 hr., 35 min.
Learning about the law or the form	57 min.
Preparing the form	11 min. 2 hr., 4 min.
Copying, assembling, and sending the form to the IRS	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 126,175 hours.

OMB Number: 1545–1130.

Form Number: IRS Form 8816.

Type of Review: Revision.

Title: Special Loss Discount Account and Special Estimated Tax Payment for Insurance Companies.

Description: Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code (IRC) section 847 to reconcile their special loss discount and special estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 3,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	4 hr., 18 min.
Learning about the law or the form	1 hr., 5 min.
Preparing, copying, assembling, and sending the form to the IRS	1 hr., 12 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 19,830 hours.

OMB Number: 1545–1151.

Form Number: IRS Form 8818.

Type of Review: Extension.

Title: Optional Form to Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.

Description: Under Internal Revenue Code section 135, if an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. Form 8818 can be used to keep a record of the bonds cashed so that the taxpayer can claim the proper interest exclusion.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 25,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form	4 min.
Preparing the form	13 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 32,000 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–31205 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 20, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0016.

Form Number: IRS Form 706–A.

Type of Review: Revision.

Title: United States Additional Estate Tax Return.

Description: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A9(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeeping: 180.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—3 hr., 17 min.

Learning about the law or the form—2 hr., 11 min.

Preparing the form—1 hr., 39 min.

Copying, assembling, and sending the form to the IRS—1 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,475 hours.

OMB Number: 1545–1559.

Revenue Procedure Number: Revenue Procedures 98–46 and 97–44.

Type of Review: Extension.

Title: LIFO Conformity Requirement.

Description: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using LIFO inventory method despite previous violations of the LIFO conformity requirements of section 472(c) or (e)(2). Revenue Procedure 98–46 modifies Revenue Procedure 97–44 by allowing medium- and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Respondent/ Recordkeeper: 20 hours.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 100,000 hours.

OMB Number: 1545–1719.

Regulation Project Number: REG–106446–98 Final.

Type of Review: Extension.

Title: Relief from Joint and Several Liability.

Description: The regulation under section 6015 provides guidance regarding relief from the joint and several liability imposed by section 6013(d)(3). The regulations provide specific guidance on the three relief provisions of section 6015 and on how taxpayers would file a claim for such relief. In addition, the regulations provide guidance regarding Tax Court review of certain types of claims for relief, as well as information regarding the rights of the non-requesting spouse. The regulations also clarify that, under section 6013, a return is not a joint return if one of the spouses signs the return under duress.

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1724.

Regulation Project Number: REG–109481–99 Final.

Type of Review: Extension.

Title: Special Rules Under section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans after Annuity Starting Dates.

Description: The collection of information requirement in sections 1.417(e)–1(b)(3)(iv)(B) and 1.417(e)–1(3)(v)(A) is required to ensure that a participant and the participant's spouse consent to a form of distribution from a qualified plan that may result in reduced periodic payments.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 12,500 hours.

OMB Number: 1545–1726.

Regulation Project Number: REG–111835–99 NPRM.

Type of Review: Extension.

Title: Regulations Governing Practice before the Internal Revenue Service.

Description: These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) Enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; and (3) practitioners do not use e-commerce to make misleading solicitations.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 56,000.

Estimated Burden Hours Recordkeeper: 53 minutes.

Estimated Total Recordkeeping Burden: 50,000 hours.

OMB Number: 1545–1732.

Regulation Project Number: REG–105946–00 Final.

Type of Review: Extension.

Title: Mid-Contract Change in Taxpayer.

Description: The information is needed by taxpayers who assume the obligation to account for the income from long-term contracts as the result of certain nontaxable transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–31206 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, January 12, 2004, at 3 p.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Audrey Jenkins at 1–888–912–1227, or (718) 488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, January 12, 2004, from 3 to 4 p.m. Central time via a telephone conference call. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 West Fulton Street, Brooklyn, NY 11201. Public comments will also be welcome during the meeting. Please contact Audrey Jenkins at 1–888–912–1227 or (718) 488–2085 for more information.

The agenda will include the following: Various IRS issues.

Dated: December 11, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31240 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on January 27–28, 2004, at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the January 27 session from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. On January 27, from 9 a.m. through January 28, the meeting will be closed for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the peresonal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (202) 254–0054.

Dated: December 11, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Managegment Officer.

[FR Doc. 03–31178 Filed 12–17–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 243

Thursday, December 18, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9094]

RIN 1545–BC01

Return of Partnership Income

Correction

In rule document 03–28190 beginning on page 63733 in the issue of Monday, November 10, 2003, make the following corrections:

§ 1.6031(a)–1 [Corrected]

1. On page 63734, in the first column, in § 1.6031(a)–1(f), in the fourth line, ''that''' should read ''that–''.

§ 1.6031(a)–1T [Corrected]

2. On the same page, in the same column, in § 1.6031(a)–1T(a)(3)(ii), in the fourth line, ''§ 601.601(d)(2)(ii)(b)'' should read ''§ 601.601(d)(2)(ii)(*b*)''.

[FR Doc. C3–28190 Filed 12–17–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 18, 2003

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 222 and 229

Use of Locomotive Horns at Highway-Rail Grade Crossings; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 8]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: FRA is issuing rules to require that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. The rules also provide for an exception to the above requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or safety measures fully compensate for the absence of the warning provided by the horn. This rule is required by law.

DATES: The effective date is December 18, 2004.

Written Comments: Comments must be received by February 17, 2004. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: FRA intends to hold a public hearing in Washington, DC to allow interested parties the opportunity for oral comment on issues addressed in the interim final rule. The date and specific location of the hearing will be set forth in a forthcoming notice that will be published in the **Federal Register** and posted on FRA's Web site (*http://www.fra.dot.gov*).

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA–1999–6439 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal e-Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW.,Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

1. Background

On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2230) addressing the use of locomotive horns at public highway-rail grade crossings. This rulemaking was mandated by Public Law 103–440, which added section 20153 to title 49 of the United States Code. The statute requires the Secretary of Transportation (whose authority in this area has been delegated to the Federal Railroad Administrator (49 CFR 1.49), to issue regulations to require the use of locomotive horns at public grade crossings, but gives the agency the authority to make reasonable exceptions.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), FRA solicited written comments from the public. By the close of the public comment period on May 26, 2000, almost 3,000 comments had been filed with the agency regarding this rule and its associated Draft Environmental Impact Statement. As is FRA's practice, FRA held the public docket open for late filed comments and considered them to the extent possible.

Because the NPRM was the subject of substantial and wide-ranging public interest, FRA took unprecedented steps to ensure that the views of the affected public would be heard and considered in development of this interim final rule. FRA conducted a series of public hearings throughout the United States in which local citizens, local and State officials, and members of the U.S. House of Representatives and Senate testified. Twelve hearings were held (Washington, DC; Fort Lauderdale, Florida; Pendleton, Oregon; San Bernadino, California; Chicago, Illinois (four hearings in the greater Chicago

area); Berea, Ohio; South Bend, Indiana; Salem, Massachusetts; and Madison, Wisconsin) at which more than 350 people testified. The extent of public comment and testimony throughout the country is evidence of the wide-ranging public interest in this rulemaking.

Because the vast majority of people reading this document will not have the benefit of having the NPRM at hand, a portion of the ''Background'' section which appeared in the proposed rule is being repeated here (with updated data, where appropriate) in order to provide the necessary perspective in which to view Congress' mandate and the resulting rule.

Approximately 4,000 times per year, a train and a highway vehicle collide at one of this country's 251,000 public and private highway-rail grade crossings. Of those crossings, more than 153,000 are public at-grade crossings—those crossings in which a public road crosses railroad tracks at grade. During the years 1997 through 2001, there were 17,601 grade crossing collisions in the United States. These collisions are one of the greatest causes of death associated with railroading, resulting in more than 400 deaths each year. For example, in the 1997–2001 period, 2,140 people died in these collisions. Another 6,615 people were injured. Approximately 50 percent of collisions at highway-rail intersections occur at those intersections equipped with active warning devices such as bells, flashing lights, or gates (approximately 62,000 crossings).

Compared to a collision between two highway vehicles, a collision with a train is forty times more likely to result in a fatality. The average freight locomotive weighs between 140 and 200 tons, compared to the average car weight of one to two tons. Many freight trains weigh in excess of ten thousand tons. Any highway vehicle, even a large truck, would be crushed when struck by a moving train. The laws of physics compound the likelihood that a motor vehicle will be crushed in a collision with a moving train. The train's weight, when combined with the likelihood that the train will not be able to stop to avoid a collision, results in the potential for severe injury or death in virtually every collision (it takes a one-hundred car train traveling 30 miles per hour approximately half a mile to stop—at 50 miles an hour that train's stopping distance increases to one and a third miles).

FRA is responsible for ensuring that America's railroads are safe for both railroad employees and the public. FRA shares with the public the responsibility to confront the compelling facts surrounding grade crossing collisions.

In 1990, as part of FRA's crossing safety program, the agency studied the impact of train whistle bans (*i.e.*, State or local laws prohibiting the use of train horns or whistles at crossings) on safety in Florida. (In this document the terms ''whistle'' and ''horn'' are used interchangeably to refer to the air powered locomotive audible warning device required to be installed on locomotives by 49 CFR 229.129, and to steam whistles required to be installed on steam locomotives by 49 CFR 230.121. These terms do not refer to a locomotive bell, which has value as a warning to pedestrians but which is not designed to provide a warning over long distances.) FRA had previously recognized the locomotive horn's contribution to rail safety by requiring that lead locomotives be equipped with an audible warning device, 49 CFR 229.129, and exempting the use of whistles from Federal noise emission standards ''when operated for the purpose of safety.'' 49 CFR 210.3(b)(3). The Florida study, which is discussed below (and which has been filed in the docket), documented how failing to use locomotive horns can significantly increase the number of collisions.

2. Who Is at Risk in a Grade Crossing Collision?

Many people, including a number of commenters to the NPRM, have expressed the view that highway drivers who disobey the law and try to beat a train through a crossing should not be protected at the expense of the peace and quiet of communities that parallel railroad tracks. FRA agrees that drivers who unlawfully enter grade crossings should be punished in accordance with appropriate traffic laws. However, strong public policy reasons argue in favor of reasonable measures to protect all who are put at risk at grade crossings, even drivers who disregard warning devices.

Overlooked in this debate are the many innocent victims of crossing collisions, including automobile and railroad passengers and railroad crews who, despite performing their duties correctly, are usually unable to avoid the collisions. Nationally, from 1994 to 1998, eight railroad crewmembers died in collisions at highway-rail crossings, and 570 crewmembers were injured. A number of locomotive engineers have commented that they or their colleagues have had to deal with the trauma associated with helplessly watching people being killed beneath their trains. Two hundred railroad passengers were also injured and two died. In Bourbonnais, Illinois, in 1999, eleven passengers died in their sleeper car following a collision with a truck at a highway-rail crossing. In addition, since approximately one-half of all collisions occur at grade crossings that are not fully equipped with warning devices, some of the drivers involved in these collisions may have been unaware of the approaching train.

Property owners living near railroad rights-of-way can also be at risk. For example, on December 1, 1992, in Hiebert, Alabama, a freight train collided with a lumber truck. Three locomotives and nine rail cars were derailed, releasing 10,000 gallons of sulfuric acid into a nearby water supply. Residents living near the derailment site had to be evacuated because of the chemical spill. Even where the locomotive consist is not derailed in the initial collision with the highway vehicle, application of the train's emergency brake can result in derailment and harm to persons and property along the right-of-way.

Law-abiding motorists can also be endangered in crossing collisions. On March 17, 1993, an Amtrak train collided with a tanker truck in Fort Lauderdale, Florida. Five people died when 8,500 gallons of burning fuel from the tanker truck engulfed cars waiting behind the crossing gates.

Highway passengers can also be victims. On December 14, 1995, in Ponchatoula, Louisiana, five people were killed when their truck was hit by an Amtrak train. Among the dead were three children who were passengers in the truck.

In making a decision on the use of locomotive horns, all of the competing interests must be reasonably considered. Those whose interests will be affected by this rule include those who may be disturbed by the sounding of locomotive horns and all of those who may suffer in the event of a collision: pedestrians using the crossing, the motor vehicle driver and passengers, those in adjacent vehicles, train crews, and those living or working nearby.

3. FRA's Study of the Florida Train Whistle Ban

Effective July 1, 1984, Florida authorized local governments to ban the nighttime use of whistles by intrastate trains approaching highway-rail grade crossings equipped with flashing lights, bells, crossing gates, and highway signs that warned motorists that train whistles would not be sounded at night. Fla. Stat. section 351.03(4)(a) (1984). After enactment of this Florida law, many local jurisdictions passed whistle ban ordinances.

In August 1990, FRA issued a study of the effect of the Florida train whistle ban up to the end of 1989. The study compared the number of collisions at crossings subject to bans with four control groups. FRA was trying to determine the impact of the whistle bans and to eliminate other possible causes for any increase or decrease in collisions.

Using the first control group, FRA compared collision records for time periods before and during the bans. FRA found there were almost three times more collisions after the whistle bans were established, a 195 percent increase. If collisions continued to occur at the same rate as before the bans began taking effect, it was estimated that 49 post-ban collisions would have been expected. However, 115 post-ban collisions occurred, leaving 66 crossing collisions statistically unexplained. Nineteen people died and 59 people were injured in the 115 crossing collisions. Proportionally, 11 of the fatalities and 34 of the injuries could be attributed to the 66 unexplained collisions.

In the second control group, FRA found that the *daytime* collision rates remained virtually unchanged for the same highway-rail crossings where the whistle bans were in effect during nighttime hours.

The third control group showed that nighttime collisions increased only 23 percent along the same rail line at crossings with no whistle ban.

Finally, FRA compared the 1984 through 1989 accident record of the Florida East Coast Railway Company (FEC), which, because it was considered an ''intrastate'' carrier under Florida law, was required to comply with local whistle bans, with that of the parallel rail line of interstate carrier, CSX Transportation Company (CSX), which was not subject to the whistle ban law. By December 31, 1989, 511 of the FEC's 600 gate-equipped crossings were affected by whistle bans. Collision data from the same period were available for 224 similarly equipped CSX crossings in the six counties in which both railroads operate. As noted above, FRA found that FEC's nighttime collision rate increased 195 percent after whistle bans were imposed. At similarly equipped CSX crossings, the number of collisions increased 67 percent.

On July 26, 1991, FRA issued an emergency order to end whistle bans in Florida. Notice of that emergency order (Emergency Order No. 15) was published in the **Federal Register** at 56 FR 36190. FRA is authorized to issue emergency orders where an unsafe condition or practice creates ''an emergency situation involving a hazard of death or injury.'' 49 U.S.C. 20104. FRA acted after updating its study with 1990 and initial 1991 collision records and finding that another twelve people had died and thirteen were injured in nighttime collisions at whistle ban crossings. During this time, a smaller study, conducted by the Public Utility Commission of Oregon, corroborated FRA's findings and led to the cessation of State efforts to initiate a whistle ban in Oregon.

FRA's emergency order required that trains operated by the FEC sound their whistles when approaching public highway-rail grade crossings. This order preempted State and local laws that permitted the nighttime ban on the use of locomotive horns.

Twenty communities in Florida petitioned for a review of the emergency order. During this review, FRA studied other potential causes for the collision increase. FRA's closer look at the issue strengthened the conclusion that whistle bans were the likely cause of the increase.

For example, FRA subtracted collisions that whistles probably would not have prevented from the collision totals. Thirty-five collisions where the motor vehicle was stopped or stalled on the crossing were removed from the totals. Eighteen of these collisions occurred before and 17 were recorded during the bans. When these figures were excluded, the number of collisions in the pre-ban period changed from 39 to 21, and the number of collisions in the post-ban period decreased from 115 to 98. Collisions which whistles could have prevented, therefore, totaled 98 collisions as compared to 21 collisions in the pre-ban period; this represents a 367 percent increase, compared to the 195 percent increase initially calculated.

Similarly, if collisions where the motor vehicle hit the side of the train were also excluded (nine in the pre-ban period and 26 in the post-ban period) as being unlikely to have been prevented by train whistles, the pre-ban collision count became 12 versus 72 in the whistle ban period. The increase in collisions caused by the lack of whistles then became 500 percent.

FRA's data, however, showed that, before the ban, highway vehicles on average, struck the sides of trains at the 37th train car behind the locomotive. After the ban took effect, 26 vehicles struck trains, and on average, struck the twelfth train car behind the locomotive. This indicated that motor vehicles are more cautious at crossings if a locomotive horn is sounding nearby. Before the whistle bans, highway vehicles tended to hit the side of the train after the whistling locomotive had long passed through the crossing. After the ban took effect, highway traffic hit the train much closer to the now silent locomotive—at the 12th car. The number of motor vehicles hitting the sides of trains also increased nearly threefold after the ban was established.

FRA also considered collisions involving double-tracked grade crossings where two trains might approach at the same time. Since a driver's view of the second train might be blocked, hearing the second train's whistle could be the only warning available to an impatient driver. FRA's Florida study found the number of second train collisions for the pre-ban period was zero, while four were reported for the period the bans were in effect.

Several Florida communities asked whether train speed increased collisions. FRA research has well established, as discussed below, that train speed is not a factor in determining the likelihood of a traffic collision at highway-rail crossings equipped with active warning devices that include gates and flashing lights. Speed, however, is a factor in determining the severity of a collision.

FRA also considered population growth in Florida, but found it was not a factor. Daytime collision rates were not increasing at the very same crossings that had whistle bans at night. If population was a factor, then the daytime numbers should have increased dramatically as well. FRA also reviewed the number of fatal highway collisions, and registered drivers and motor vehicles and found no increases that either paralleled or explained the rise in nighttime crossing collisions.

In the first two years after July 1991, when FRA issued its emergency order prohibiting whistle bans in Florida, collision rates dropped dramatically to pre-ban levels. In the two years before the emergency order, there were 51 nighttime collisions. In the two years after, there were only 16. Daytime collisions dropped slightly from 34 collisions in the two years before the emergency order, to 31 in the following two years.

4. FRA's Nationwide Study of Train Whistle Bans

FRA's Florida study raised the concern that whistle bans could be increasing collisions in other locations. Given the wide difference between grade crossing conditions from one community to another, FRA did not assume that the Florida results would be true at every whistle ban crossing. FRA began a nationwide effort to locate grade

crossings subject to whistle bans and study collision information for those crossings. The Association of American Railroads (AAR) joined the FRA in that effort.

The AAR surveyed the rail industry and found 2,122 public grade crossings subject to whistle bans for some period of time between January 1988 and June 30, 1994. This total did not include the 511 public crossings that were subject to whistle bans in Florida that FRA had already studied.[1] The study also did not include crossings on small, short line railroads, and certain regional railroads which did not report to the AAR. The nationwide survey found whistle bans in 27 States that affected 17 railroads. FRA studied collisions occurring between January 1988, and June 30, 1994.

Two thousand and four of the crossings were subject to 24-hour whistle bans. Another 118 grade crossings were subject to nighttime-only bans. The States with the largest number of whistle ban crossings were Illinois, Wisconsin, Kentucky, New York, and Minnesota. More than half of the crossings were on three railroads: CSX, Consolidated Rail Corporation (Conrail), and Soo Line. A report covering the nationwide study was issued in April 1995. FRA found that whistle ban crossings averaged 84 percent more collisions than similar crossings with no bans. There were 948 collisions at whistle ban crossings during the period studied. Sixty-two people died in those collisions and 308 were injured. Collisions occurred on every railroad with crossings subject to whistle bans, and in 25 of the 27 States where bans were in effect.

Since the 1995 study, FRA continued to analyze relevant data. Over the period of 1992–1996, there were 793 collisions at 2,366 crossings subject to whistle bans. These collisions resulted in the fatalities and injuries displayed in Table 1, as well as more than $2 million in motor vehicle damages.

[1] The FEC crossings comprised virtually all of the whistle ban crossings in Florida. For simplicity, FRA elected to remove all Florida crossings from the national study. Since it became apparent from this initial national review that the FEC experience represented the high end of ban impacts, and since those impacts had been mitigated by E.O. 15 with respect to the later study period, FRA continued to remove both Florida ban crossings and Florida train horn crossings from all subsequent studies. Florida public crossings represent 2.6 percent of public crossings, so this omission should not materially affect the national analysis.

TABLE 1.—COLLISION INJURIES AND FATALITIES BY TYPE OF PERSON INVOLVED

Type of person involved	Injuries	Fatalities
Motorist	258	56
Pedestrian	17	41
Railroad employee	56	0

The types of collisions which took place at whistle ban crossings and the resulting casualties are shown in Table 2 (casualty figures in this table exclude casualties to railroad employees). It is interesting to note that the mean train speed (train speed is positively correlated with fatalities) varies by type of collision. Of the injuries and fatalities shown in Table 2, 11 injuries and 5 deaths occurred when the vehicle was hit by a second train.

TABLE 2.—TYPE OF COLLISION

Type of collision	Injuries	Fatalities	Mean train speed
Motor vehicle struck train	51	8	15.5
Train struck motor vehicle	224	89	25.4

The driver was killed in the collision in 42 instances (5.3 percent of collisions), the remaining 55 fatalities were either passengers or pedestrians. The driver passed standing vehicles to go over the crossing in 37 of the collisions (4.7 percent). The driver was more likely to be killed when moving over the crossing at the time of the collision (35 of the driver fatalities), rather than when the vehicle was stopped or stalled at the crossing, and in most of the collisions (69.9 percent) at whistle-ban crossings the driver was moving over the crossing. Additionally, in almost every collision (97 percent), a warning device (either active or passive) was located on the vehicle's side of the crossing. This supports the theory that the warning given by the train horn could deter the motorist from entering the crossing.

Collisions which took place when the motorist was moving over the crossing were more likely to be fatal (72 percent of the fatalities). This type of collision was also more likely to result in injury with 209 of the 258 motorist injuries occurring under these circumstances. These are the types of collisions the proposed rule is designed to prevent. Motorists that fail to notice or heed the warning devices in place at a crossing may be deterred by the sound of a train horn. The motorist is also given information by the horn about the proximity, speed, and direction of the train.

FRA's study indicated that the installation of automatic traffic gates at crossings with whistle bans was more than twice the national average. Forty percent of the whistle ban crossings had gates compared to 17 percent nationally.

FRA found 831 crossings where whistle sounding had at one time been in effect, but where the practice had changed during the January 1988 through June 1994 study period. In 87 percent of the cases, bans were no longer in effect. A ''before-and-after'' analysis comparing collision rates showed an average of 38 percent fewer collisions when whistles were sounded indicating that resuming use of the whistles had a .38 effectiveness rate in reducing collisions. This finding paralleled the Florida experience.

FRA also rated whistle ban grade crossings according to an ''Accident Prediction Formula.'' The formula predicts the statistical likelihood of having a collision at a given highway-rail grade crossing. The physical characteristics of each crossing were considered in the formula, including the number of tracks and highway lanes, types of warning devices, urban or rural location, and whether the roadway was paved. Also considered were operational aspects, such as, the number of highway vehicles, and the number, type, time of day, and maximum speed of trains using the crossing. The formula was developed using data from thousands of collisions spanning many years. FRA then ranked the 167,000 public crossings in the national inventory at that time in an identical manner. Both the whistle ban crossings and the national inventory crossings were then placed into one of ten groups ranging from low-risk to high-risk.

FRA compared the number of collisions occurring within each of the ten groups of crossings, over a five year period from 1989 through 1993, and found that for nine out of the ten risk groups, the whistle ban crossings had significantly higher collision rates than the crossings with no whistle bans. On average, the risk of a collision was found to be 84 percent greater at crossings where train horns were silenced. Another way to interpret this difference would be to say that locomotive horns had a .46 effectiveness rate in reducing the rate of collisions.

FRA was concerned about the higher risk disclosed by the nationwide study. From its vantage point, FRA was able to see the elevated risk associated with whistle bans, which might not be apparent to local communities. While

crossing collisions are infrequent events at individual crossings, the nationwide study, and the experience in Florida, showed they were much less infrequent when train horns were not sounded.

FRA conducted an outreach program in order to promptly share this information with all communities where bans were in effect. In addition to issuing press releases and sending informational letters to various parties, FRA met with community officials and participated in town meetings. Along with the study's findings, information about the upcoming rule requiring the sounding of train horns was presented, including provisions for Supplemental Safety Measures (SSMs) that could be implemented by communities to compensate for silenced train horns and allow bans to remain in effect.

From the outreach effort, FRA gained a clearer understanding of local concerns and issues. Many of those concerns were expressed in person and others were submitted in writing to FRA's train horn docket. Another result of the outreach effort was the identification by communities and State and local governmental agencies of 664 additional crossings that were purportedly subject to whistle bans, but not included in the nationwide study. About 95 percent of these were located in the city and suburbs of Chicago, Illinois. Many carry a high volume of commuter rail traffic.

Prior to issuing the NPRM, FRA updated its analysis of safety at whistle ban crossings, expanding it to include data for all the Chicago Region crossings as well as for a few other newly identified locations.

FRA also refined its procedure by conducting separate analyses for three different categories of warning devices in place at the crossings (*e.g.*, automatic gates with flashing lights; flashing lights or other active devices without gates; and passive devices only, such as ''crossbucks'' or other signs). By separating crossings according to the different categories of warning devices installed, FRA was better able to identify the level at which locomotive horns increase safety at crossings with different types of warning devices and thus the level at which substitutes for the horn must be effective in order to fully compensate for the lack of a horn at those crossings. In addition, FRA excluded from the analysis certain collisions where the sounding of the train horn would not have been a deterrent to the collisions. These included cases where there was no driver in the vehicle and collisions where the vehicle struck the side of the train beyond the fourth locomotive unit (or railcar). FRA also excluded events where pedestrians were struck. Pedestrians, compared to vehicle operators, have a greater opportunity to see and recognize an approaching train because they can look both ways from the edge of the crossing, closer than the motorist sitting at least a car hood length or more back from the edge. They can also stop or reverse their direction more quickly than a motorist if they have second thoughts about crossing safely.

Data for the five-year time period from 1992 through 1996 were used for the updated analysis in place of the older data of the 1995 Nationwide Study. For the updated analysis, the collision rate for whistle ban crossings in each device category was compared to similar crossings in the national inventory using the ten-range risk level method used in the original study.

The analysis showed that an average of 62 percent more collisions occurred at whistle ban crossings equipped with automatic gates and flashing lights than at similarly equipped crossings across the nation without bans. For purposes of the NPRM, FRA used this value as the increased risk associated with whistle bans instead of the 84 percent cited in the Nationwide Study of Train Whistle Bans released in April 1995. FRA determined that 62 percent was appropriate because it represents the elevated risk associated with crossings with automatic gates and flashing lights, which is the only category of crossings that will be eligible under this rule for new ''quiet zones'' (except for certain crossings where train speeds do not exceed 15 miles per hour).

The updated analysis also indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. This finding made clear that the train horn was highly effective in deterring collisions at non-gated crossings equipped only with flashing lights. The only exception to this finding was in the Chicago Region where collisions appeared from available data to be 16 percent less frequent. This will be discussed in greater detail below.

In comparing the collision differences at crossings with gates and those without gates, FRA found that about 55 percent of the collisions at crossings with gates occurred when motorists deliberately drove around lowered gates. These collisions occurred 128 percent more often at crossings with whistle bans than at other crossings. Another 18 percent of the collisions occurred while motorists were stopped on the crossings, probably waiting for vehicles ahead to move forward. There were smaller percentages of collisions involving stalled and abandoned vehicles. Suicides are not included in the collision counts. At crossings equipped with flashing signal lights and/or other active warning devices, but not gates, collisions occurred 119 percent more often at crossings subject to bans. A distinction should be made between the two circumstances. In the case of lowered gates, it is the motorist's decision to circumvent a physical barrier to take a clearly unsafe and unlawful action that can result in a collision. However, in the case of crossings with flashing light signals and/or other active devices, collisions may be more the result of a motorist's error in judgment rather than a deliberate violation of the State's motor vehicle laws. The ambiguity of flashing lights at crossings, which in other traffic control situations indicate that the motorist may proceed after stopping, when safe to do so, coupled with the difficulty of correctly judging the rate of approach of a large object such as a locomotive, may contribute to this phenomenon. FRA's collision data suggested that the added warning provided by the train horn is most critical at crossings without gates but which are equipped with other types of active warning devices.

By separating crossings according to the different categories of warning devices installed, FRA was better able to identify the level at which locomotive horns increase safety at gated crossings and thus the level at which substitutes for the horn must be effective in order to fully compensate for the lack of a horn at those crossings.

For crossings with passive signs as the only type of warning device, the updated study indicated an average of 27 percent more collisions for crossings subject to whistle bans. This is the smallest difference identified between crossings with and without whistle bans. These crossings account for about one fourth of the crossings with whistle bans. Typically, they are the crossings with the lowest aggregate risk of collision because the installation of active warning devices usually follows a sequence where the highest risk crossings are equipped first. Two determinants of crossing risk are the amount of train traffic and highway traffic at a crossing. Often, crossings with only passive warning devices are located on seldom used sidings and industrial tracks and/or on roadways with relatively low traffic levels. FRA

believes this may be the reason that the difference in the numbers of collisions at whistle ban and non-ban crossings is so much less than for the other crossing categories. For crossings with passive warnings where trains do not exceed 15 miles per hour and where railroad personnel use flags to warn motorists of the approach of a train, whistle bans would entail a small risk of a collision resulting in an injury. However, at crossings with passive warnings and with higher train speeds, motorists would have no warning of the approach of a train if the train horn were banned. At such crossings, in order to ensure their safety, motorists must search for and recognize an approaching train, and then visually judge whether it is moving, and if so, estimate its arrival time at the crossing, all based only on visual information which may be impaired by hills, structures, vegetation, track curvature, and road curvature as well as by sun angle, weather conditions, or darkness. The driver's decision to stop must be made at a point sufficiently in advance of reaching the crossing to accommodate the vehicle's stopping distance. If other vehicles are following, a sudden decision to stop could result in a rear-end collision with the vehicle being pushed into the path of the train. While FRA's data indicated that the smallest increase in collision frequency is associated with whistle bans at passive crossings, logic suggested that the banning of train horns at passive crossings could entail a much more significant safety risk per unit of exposure (vehicle crossings per train movement). Without the audible train horn warning, motorists would have no indication of the imminent arrival of a train beyond what they could determine visually. For motorists unfamiliar with whistle bans who encounter passive crossings where horns are not sounded, there would be an even greater risk.

5. Statutory Mandate

After reviewing FRA's Florida study, Congress addressed the issue. On November 2, 1994, Congress passed Public Law 103–440 (''Act'') which added § 20153 to title 49 of the United States Code. (Subsections (I) and (j) were added on October 9, 1996 when § 20153 was amended by Public Law 104–264.) The Act requires the use of locomotive horns at public grade crossings, but gives FRA the authority to make reasonable exceptions. Section 20153 of title 49 of the United States Code states as follows:

''Section 20153. Audible warning at highway-rail grade crossings.

''(a) Definitions.—As used in this section—

''(1) the term ''highway-rail grade crossing'' includes any street or highway crossing over a line of railroad at grade;

''(2) the term ''locomotive horn'' refers to a train-borne audible warning device meeting standards specified by the Secretary of Transportation; and

''(3) the term ''supplementary safety measure'' (SSM) refers to a safety system or procedure, provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Secretary to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. A traffic control arrangement that prevents careless movement over the crossing (*e.g.*, as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in the particular direction of travel), and that conforms to standards prescribed by the Secretary under this subsection, shall be deemed to constitute an SSM. The following do not, individually or in combination, constitute SSMs within the meaning of this subsection: standard traffic control devices or arrangements such as reflectorized crossbucks, stop signs, flashing lights, flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

''(b) Requirement.—The Secretary of Transportation shall prescribe regulations requiring that a locomotive horn shall be sounded while each train is approaching and entering upon each public highway-rail grade crossing.

''(c) Exception.—(1) In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—

''(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;

''(B) for which use of the locomotive horn as a warning measure is impractical; or

''(C) for which, in the judgment of the Secretary, SSMs fully compensate for the absence of the warning provided by the locomotive horn.

''(2) In order to provide for safety and the quiet of communities affected by train operations, the Secretary may specify in such regulations that any SSMs must be applied to all highway-rail grade crossings within a specified distance along the railroad in order to be excepted from the requirement of this section.

''(d) Application for Waiver or Exemption.—Notwithstanding any other provision of this subchapter, the Secretary may not entertain an application for waiver or exemption of the regulations issued under this section unless such application shall have been submitted jointly by the railroad carrier owning, or controlling operations over, the crossing and by the appropriate traffic control authority or law enforcement authority. The Secretary shall not grant any such application unless, in the judgment of the Secretary, the application demonstrates that the safety of highway users will not be diminished.

''(e) Development of Supplementary Safety Measures.—(1) In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new SSMs, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn.

''(2) The Secretary may include in regulations issued under this subsection special procedures for approval of new SSMs meeting the requirements of subsection (c)(1) of this section following successful demonstration of those measures.

''(f) Specific Rules.—The Secretary may, by regulation, provide that the following crossings over railroad lines shall be subject, in whole or in part, to the regulations required under this section:

''(1) Private highway-rail grade crossings.

''(2) Pedestrian crossings.

''(3) Crossings utilized primarily by nonmotorized vehicles and other special vehicles.

''(g) Issuance.—The Secretary shall issue regulations required by this section pertaining to categories of highway-rail grade crossings that in the judgment of the Secretary pose the greatest safety hazard to rail and highway users not later than 24 months following the date of enactment of this section. The Secretary shall issue regulations pertaining to any other categories of crossings not later than 48 months following the date of enactment of this section.

''(h) Impact of Regulations.—The Secretary shall include in regulations prescribed under this section a concise statement of the impact of such regulations with respect to the operation of section 20106 of this title (national uniformity of regulation).

''(I) Regulations.—In issuing regulations under this section, the Secretary—

''(1) shall take into account the interest of communities that—

(A) have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings; or

(B) have not been subject to the routine (as defined by the Secretary) sounding of a locomotive horn at highway-rail grade crossings;

''(2) shall work in partnership with affected communities to provide technical assistance and shall provide a reasonable amount of time for local communities to install SSMs, taking into account local safety initiatives (such as public awareness initiatives and highway-rail grade crossing traffic law enforcement programs) subject to such terms and conditions as the Secretary deems necessary, to protect public safety; and

''(3) may waive (in whole or in part) any requirement of this section (other than a requirement of this subsection or subsection (j)) that the Secretary determines is not likely to contribute significantly to public safety.

''(j) Effective Date of Regulations.—Any regulations under this section shall not take effect before the 365th day following the date of publication of the final rule.''

6. Issuance of Interim Final Rule

FRA is issuing today's rule as an interim final rule, rather than as a final rule. An interim final rule has the same force and effect as a final rule, but differs from a final rule in one principal way—when an interim final rule is issued, comments are solicited and the agency reserves the right to make changes to the rule in response to the comments received. Because the rule issued today is a logical outgrowth of the NPRM, FRA could have issued it as a final rule. Both the NPRM and interim final rule issued today permit exceptions to the use of the locomotive horn, address the need to mitigate the risk associated with lack of the locomotive horn, provide for implementation of SSMs and ASMs, and address mitigation of risk on a corridor-wide, rather than individual grade crossing basis. Like one major provision of the NPRM, the interim final rule bases the determination of a corridor's risk mitigation goal on FRA's Accident Prediction Formula (APF). However, the interim final rule adds a level of further sophistication to the formula by considering collision severity and permitting quiet zones in part based on a corridor's relationship to a national crossing risk index derived from this severity-weighted APF. A large number of commenters complained that FRA did not sufficiently take into consideration safety history at the crossing. While the APF does take into consideration such past record, the interim final rule builds on the NPRM and resulting comments by placing more weight on the safety record at crossings within a corridor and permitting exceptions based on that safety record. The result—that some quiet zones may be established without the need to implement SSMs or ASMs if the corridor does not pose a significant risk based on a national standard—flows logically from the NPRM's use of the APF and the commenters' clear request to make the entire rule more risk based.

Even though this rule could be issued as a final rule, FRA has determined that the public should have an opportunity to comment on the rule as changed. Because the language in some sections has been revised, FRA, and the final rule, will benefit from the input of the public; FRA has found in the past that public comments often contain suggestions that can improve a regulatory document. Therefore, comments are being solicited on all aspects of this rule [see ''Public Participation'' section]. FRA will review the comments and reserves the right to make revisions when issuing a final rule.

7. Effective Date of This Rule

Because this interim final rule has all the legal attributes of a final rule, the effective date of this rule will be December 18, 2004. Congress specifically provided for this one year delay; subsection (j) of § 20153, which was added to the basic rulemaking mandate in 1996, provides that *any* regulations issued under that section shall not take effect before the 365th day following the date of publication of the final rule. Issuing this interim final rule rather than a final rule will not penalize those communities which have waited a number of years for issuance of a rule permitting the creation of quiet zones. They will still be able to establish quiet zones on the same schedule as if a final rule were issued today. Alternatively, issuance of this rule in the form of an interim final rule will not have a significant negative effect on those communities with present whistle bans. FRA has specifically included in the rule sufficient time for those communities to conform to any changes that may be made to the interim final rule in order to enable them to retain their whistle-free crossings.

However, we don't believe Congress intended that FRA delay administrative actions such as working with public authorities and reviewing applications for quiet zones in order to permit communities to institute quiet zones at the earliest possible date after the one year required delay has elapsed. Accordingly, FRA will accept quiet zone applications from public authorities during the one year delay period. While this interval should enable public authorities to begin planning, they should also be aware that the final rule may contain changes based on comments to this interim final rule. Because of this uncertainty, FRA will make every effort to issue a final rule expeditiously after the close of the comment period.

8. Rule Summary

The following very brief summary of this interim final rule is provided for the reader's convenience. Because this is merely a summary, it should not be relied on for definitive information regarding compliance with this rule.

- This rule applies to all railroads that operate on the general railroad system of transportation. The rule does not apply to freight railroads and tourist and scenic railroads which are not on the general railroad system. It does not apply to rapid transit systems in urban areas that are not connected to the general railroad system of transportation. Rapid transit operations sharing tracks with general system railroads at crossings, or sharing crossings with general system railroads are connected to the general system at the crossings and are thus subject to part 222; however, rapid transit operations are not subject to the horn volume requirements of part 229.
- Locomotive horns must be sounded while approaching and entering upon each public highway-rail grade crossing. The horn sound level must be a minimum of 96 dB(A) and no louder than 110 dB(A) measured 100 feet in front of the locomotive and 15 feet above the rail. All locomotives must sound the horn in the standard sequence of two longs, one short, and one long starting at least 15 seconds, but no more than 20 seconds before reaching the grade crossing, however, in no case may the horn be sounded more than ¼ mile before the crossing.
- A railroad may, with certain exceptions, decide to not sound the

locomotive horn at a crossing if the locomotive speed is 15 miles per hour or less and train crew members or equipped flaggers flag the crossing to provide warning of the approaching train to motorists.

• A quiet zone is at least ½ mile in length, although Pre-Rule Quiet Zones may continue unchanged. Except for certain exceptions listed in the rule, each public crossing within a New Quiet Zone must at a minimum be equipped with flashing lights, gates, and signs warning of the absence of locomotive horns. Each public crossing within a Pre-Rule Quiet Zones may retain, but must not downgrade the warning systems in place.

• This rule does not cover horn use at private crossings outside of quiet zones. Their use will continue to be governed by State and local laws and private agreements. However, if a private crossing is within a quiet zone, horn use is restricted at that crossing.

• The rule provides for two types of quiet zones—Pre-Rule Quiet Zones (consecutive crossings where horns were silenced by State or local law or by formal or informal agreement, and which were in existence as of October 9, 1996 and on December 18, 2003, and New Quiet Zones (quiet zones established under the terms of this rule and which do not qualify as Pre-Rule Quiet Zones).

• A quiet zone may be established using SSMs, or in certain cases, ASMs, in two ways: (a) By designation by a public authority (which is the public entity responsible for safety and maintenance of the roadway crossing the railroad tracks at a public highway-rail grade crossing); or (b) by application to FRA.

• A quiet zone may be designated if (a) supplementary safety measures are applied to every public grade crossing within the quiet zone; (b) the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold; or (c) supplementary safety measurers are instituted which reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to the risk level which would exist if locomotive horns sounded at all crossings within the quiet zone. The public authority has discretion as to how the Quiet Zone Risk Index is reduced, and may choose the type of SSM to be applied and the crossings at which they are to be applied in complying with either (a), (b), or (c).

• If a public authority, for whatever reason, cannot comply with the requirements of quiet zone designation, it may apply to FRA for approval to establish a quiet zone using a combination of SSMs, or ASMs (which includes modified SSMs). As in quiet zone designation, the public authority has discretion as to which SSMs or ASMS to apply and where they are to be applied. However, in this case, the public authority's proposal is reviewed by FRA. If FRA determines that the safety improvements will compensate for the absence of the locomotive horn or that the safety improvements will reduce risk to a level at, or below the Nationwide Significant Risk Threshold, a quiet zone may be established.

• A Pre-Rule Quiet Zone will be considered approved and may remain in effect if the quiet zone could qualify for quiet zone designation if it were a New Quiet Zone based on having a Quiet Zone Risk Index at, or below, the Nationwide Significant Risk Threshold or if there haven't been any relevant collisions at the public crossings within the quiet zone for the past 5 years and the Quiet Zone Risk Index was less than twice the Nationwide Significant Risk Threshold.

• If a Pre-Rule Quiet Zone cannot comply with the requirements for a quiet zone designation as discussed above, the existing horn restrictions may continue on an interim basis. The restrictions may continue for five years if within, three years after publication of this rule, the public authority files with FRA a detailed plan for maintaining the Pre-Rule Quiet Zone (or establishing a New Quiet Zone). Horn restrictions may continue for an additional three years beyond the five-year period if the appropriate State agency provides FRA with a comprehensive statewide implementation plan and physical improvements are made within the quiet zone, or in a quiet zone elsewhere within the State, within three years and four years after publication respectively.

• FRA will annually review every quiet zone established by comparing the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority files plans to implement SSMs or ASMs within six months and implements such SSMs or ASMs within three years.

• Wayside horns may be installed within a quiet zone if the public authority determines that it is appropriate to do so. Wayside horns may also be used outside of quiet zones in lieu of locomotive horns at crossings equipped with automatic flashing lights and gates. (Wayside horns have not yet been classified by FHWA as traffic control devices. If FHWA does classify them as traffic control devices, the wayside horn must also be approved in the Manual on Uniform Traffic Control Devices (MUTCD) or FHWA must approve experimentations pursuant to section 1A.10 of the MUTCD.)

9. Overview of the Interim Final Rule: Principles, Strategies, and Major Outcomes

A. Usefulness of the Train Horn

This rulemaking was mandated by law, but its impetus derives from a clearly defined safety need. A majority of the States and all railroads have mandated use of the train horn to provide an audible warning at highway-rail crossings. FRA research and analysis, both prior to institution of this rulemaking and during its pendency, has confirmed the beneficial safety impact of the train horn. The National Transportation Safety Board (NTSB) has also supported the need for this warning to motorists.

FRA understands the point made by commenters that the horn cannot be relied on to prevent every accident, and the data confirm that. Nevertheless, the horn is one cue that is often available to the motorist at the decision point; and it should not be withheld absent serious thought about the consequences. There are some circumstances (*e.g.*, restricted view) in which the train horn may be the best, and most convincing, warning to the motorist. Each year a good portion of the accidents at crossings occur when motorists are not convinced by even flashing warning lights and downed gates, and they drive around the gates and are struck by the train they neither saw nor heard. The train horn, which announces that there is, in fact, a train coming now (not switching cars down the track somewhere out of danger) may often be the most effective warning.

FRA understands the sense of frustration among law-abiding citizens who feel that they should not be burdened by train horn noise (or the cost of alternatives) because other citizens violate traffic laws at highway-rail crossings equipped with flashing lights and gates. FRA is a strong proponent of law enforcement at

highway-rail crossings. However, the statute clearly contemplates that motorists will be given the additional, often final warning that the train horn provides (or that other safety measures will be instituted), even where warning systems employing flashing lights and gates are present. Further, as a matter of policy, FRA believes that it is appropriate to protect even the unwise from the consequences of their misdeeds where those consequences are especially severe—and where society as a whole may bear the burden of those consequences.

As noted elsewhere in this preamble, victims of collisions at highway-rail crossings are not limited to reckless or intoxicated drivers. Indeed, in many cases victims are innocent passengers who have had no control whatsoever over the driver's behavior.

Even though collisions at highway-rail crossings are far more severe in their consequences than the average highway accident, most victims survive. Many incur substantial medical bills and require extended rehabilitation. Costs are borne by the general public through health and disability insurance arrangements, and through higher costs of goods and services provided by employers who must extend sick leave and other benefits. In this regard, many costs associated with casualties that occur in whistle ban jurisdictions are in effect hidden taxes on persons outside those communities over which these costs are spread. From an economic standpoint, the community enjoys its quiet and, unless measures have been taken to compensate for the silencing of the horn, someone else pays for most of it.

Finally, there can be victims on the trains and in the general community, as well. Collisions between trucks and heavy trains can cause the injury or even death of train crew members. Some collisions at crossings cause trains to derail (the risk is significant when a heavy truck is involved), and cars containing hazardous materials are found in a high percentage of trains. Release of hazardous materials in a community can result in evacuations, property damage and even injury or death. When the collision involves a passenger train, the potential exists for harm to passengers, as well as crew members. Commenters were correct in noting that such events are rare, but the potential for catastrophic event is real; and an important role for safety regulation is to anticipate and mitigate these sorts of risks.

In summary, we all have a stake in preventing collisions at highway-rail crossings; and there is no practical way to transfer all costs to the driver who fails to obey the law, even if that were a desirable thing.

In general, these principles appear to be accepted outside of whistle ban jurisdictions. Train horns continue to sound today at over 98 percent of public highway-rail crossings, and over 9 million Americans living and working along rail lines are incidentally exposed to the ''noise'' from this source. Most communities and residents appear to tolerate these interruptions reasonably well.

B. Incompatibility of Horn Noise With Community Needs

However, two general trends appear to have converged in a manner that is antithetical to community acceptance of train horn noise under certain conditions. First, as a Nation we are becoming more sensitive to disruptive sources of noise in our environment. This reflects success in building quieter communities and in engineering noise out of daily life (through zoning, building codes, better design of motor vehicles, etc.). Second, as a result of the consolidation of the national rail system since the 1970s, rail traffic has been concentrated on fewer lines, resulting in more train movements through those communities where main lines continue to be operated. Particularly when the train horn is sounded, the number of train movements is clearly a significant factor in the ''noise load'' imparted to the community.

For various reasons, there has been a growth in the number of ordinances and arrangements under which train horns are silenced (''whistle bans''). Further, in many communities where State law currently does not permit whistle bans, relief from the noise associated with train horns is being actively sought by residents and their elected representatives. Fear of losing existing bans, and the desire to silence train horns in some areas without existing bans, have combined to create significant public interest in this proceeding.

The situation of existing whistle ban communities is particularly vexing, because public and private planning decisions have been made with the assumption that horns will be banned. Commenters in the Chicago Region [2] also called attention to the conflict between sound urban planning, which promotes construction of high density housing near a commuter railroad stations, and very frequent use of the train horn on the extremely active rail lines in that region.

Unfortunately, there is no known strategy for providing audible warning to motorists without also spreading unwanted noise into communities. (The wayside horn can reduce the amount of unwanted noise, but not eliminate it entirely.) Future research may permit refinement of the multi-frequency pattern of contemporary train horns, but FRA has no present information that suggests a means of providing a clearly identifiable and urgent signal in a motor vehicle using a sound that is pleasing to nearby residents.

C. Crafting Exceptions to Use of the Train Horn

The statute provides direction for adjusting the competing interests of safety and community quiet. Although the statute says unequivocally, ''The Secretary of Transportation shall prescribe regulations requiring that a locomotive horn shall be sounded while each train is approaching and entering upon each public highway-rail grade crossing,'' most of the language of the statute has the effect of explaining how exceptions might be crafted. The statute continues:

(1) In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—

(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;

(B) for which use of the locomotive horn as a warning measure is impractical; or

(C) for which, in the judgment of the Secretary, SSMs fully compensate for the absence of the warning provided by the locomotive horn.

The last of these exceptions—substitution of supplementary (or alternative) safety measures—was at the heart of the NPRM and remains the best means of reconciling safety and community quiet. As explained below, this interim final rule seeks to make the list of other safety measures as flexible and cost effective as possible.

The second exception, which refers to a determination of impracticability, is a criterion of limited application. It is impractical to provide effective warning by sounding the horn if it is necessary to back a mile-long train over a crossing (so the crossing needs to be flagged), and it is impractical to provide a warning of suitable duration prior to the train's arrival in the case of a 110 mph passenger train (so active warning

[2] The Chicago area, or Chicago Region, is comprised of 6 counties: Cook, DuPage, Lake, Kane, McHenry, and Will.

devices and a ''sealed corridor'' strategy are strongly recommended, whether or not the horn is used). But in most other scenarios, the train horn will serve its purpose if sounded. Some commenters invited FRA to consider the cost of SSMs as a test of impracticability, but that is really a policy or political objection, not one going to the practicability of sounding the train horn and thereby alerting the motorist. FRA believes that the suggested reading of ''impractical'' is not appropriate and would result in an enormous increase in safety risk by permitting train horns to be banned routinely without the need to take compensating measures.

The first exception, absence of ''significant risk with respect to loss of life or serious personal injury,'' was relied upon in the NPRM only with respect to very limited circumstances (but comments were solicited regarding other options). As a result of testimony and written comments received from the public, including elected and appointed representatives of State and local governments, FRA has reviewed in some detail whether this criterion should be given greater effect in the final rule. The statute clearly does not require the exclusion of all risk, and FRA agrees that it is best to interpret and implement this exception, if possible, in a manner that is not in conflict with the general approach taken by the Congress and the Department of Transportation (DOT) with respect to other safety laws and regulations addressing public safety.

In general, DOT and other Executive Branch departments and agencies must consider costs and benefits before issuing regulations. This is true even where statutes have mandated that rules on particular topics be issued, because in most cases the Congress has left the means of implementation to the agencies. The present rulemaking involves a much more specific mandate than typically embodied in safety legislation. Nevertheless, FRA did consider costs and benefits in crafting the proposed rule (and found that, overall, investments in safety systems used as a substitute for the horn would be recovered). However, in the NPRM, FRA did not focus sharply on the costs and benefits for those communities where the underlying risk of a casualty-producing collision is comparatively low. Some commenters in areas with existing bans responded with the criticism to the effect that, while some other community might recover its costs, for the particular community the existing risk at crossings is very low and no expenditure is warranted.

In this interim final rule FRA has sought to afford greater recognition to situations where the risk of serious injury is low. In so doing, FRA has been conscious of the need to ensure public funds are expended on improvements that have significant value in holding down casualty risk. FRA has also been conscious of the fact that there may be, at least in the short term, an ''opportunity cost'' associated with the decision to spend scarce tax dollars on SSMs in order to maintain community quiet, rather than other uses. (In acknowledging this point, FRA notes that this is not a zero sum exercise because the avoidance of accident consequences is an economic benefit to the community.)

FRA recognizes that there is no way to achieve what would be perceived as perfect justice for communities in this proceeding, any more than it is possible to eliminate all risk to persons. However, FRA has concluded that the risk assessment method selected for this proceeding should—

- Permit exceptions to use of the train horn based on absence of significant risk, in most cases avoiding expenditures that would not be recovered through accident and casualty reduction;
- Require use of the train horn where risk is clearly significant, unless SSMs and ASMs are implemented to abate the excess risk associated with silencing the train horn; and
- Respond to changes in rail operations and communities as data becomes available to update the relevant computations.

The particular means chosen by FRA to identify significant risk is the creation of a risk index by which prospective quiet zones can be rated in relation to one another and in relation to selected criteria. The method (which is more fully explained below) is applicable to quiet zones created both where there are existing bans and elsewhere. In considering how to approach this problem, FRA elected to start with the current Accident Prediction Formula (APF), which uses data elements available from the national inventory of highway-rail crossings and the FRA Railroad Accident-Incident Reporting System. The APF was developed by the Volpe National Transportation Systems Center for FRA and the Federal Highway Administration, and it is maintained in current form to support initial identification of crossings that are candidates for safety improvements using Federal funds. Many States use this formula or similar formulas to rank crossings for this purpose.

The strength of the formula is in its ability to combine empirically-derived insights about risk, based on common characteristics of crossings and the accident history of the individual crossings under study. As such, it is reasonably successful in predicting where accidents will occur. As with any model of this type designed to study relatively rare events, the model is more successful in predicting results for a group of crossings with at least some similar characteristics (*e.g.*, several crossings in a proposed quiet zone) than for a single crossing.

Risk is defined as the product of probability (frequency) and severity (consequences), so the APF prediction of the likely number of accidents by itself is not enough. However, the suite of APF tools includes calculations that permit estimations of the likelihood that a predicted accident will result in injury or death to one or more persons. FRA has taken advantage of these tools to estimate the likely frequency of relevant (casualty-producing) collisions. To determine the likely number of injuries and fatalities in predicted accidents, FRA has employed the averages from historical accidents. In order to combine the consequences of non-fatal and fatal injury, FRA has used relational values derived from cost-benefit practice (in which the avoidance of a fatality is assigned a societal value based on established government guidelines, and both less serious and more serious non-fatal casualties are then assigned a value proportional to the value of avoiding a fatality). The result is a risk index value for each crossing.

From the inception of this rulemaking (indeed, beginning with the issuance of Emergency Order 15 in 1991), FRA has sought to address the issue of quiet zones (contiguous rail corridors of reasonable length having one or more crossings) rather than individual crossings. FRA has noted that a crossing-by-crossing approach would not serve community interests, given the distance over which the horn must be sounded and given the proximity of crossings in most communities. Corridor planning permits risk reduction to be taken at the lowest possible cost, and it encourages consolidation of crossings through closure of redundant or very hazardous crossings. Further, locomotive engineers have increasingly demanding jobs and should not be distracted by the task of picking out individual crossings along their route where the horn must or must not be used. There were no comments in this proceeding that effectively questioned this rationale, and there was substantial support for it.

As a result, FRA has adhered to the corridor approach in this interim final rule, so use of the risk index is specified to be at the corridor (quiet zone) level. The basic logic of the method is as follows:

- Estimate the probability of injuries or fatalities at each crossing using the APF formulas;
- Aggregate the risk from all crossings in the proposed quiet zone; and
- Divide the risk by the number of crossings,
- Yielding a risk estimate for the proposed quiet zone.

This approach must be adjusted if the proposed quiet zone was not subject to an historical whistle ban, since the effect of silencing the train horn would be to drive up risk. As more fully explained below, with limited exceptions the adjustments necessarily rely on national averages of train horn effectiveness.

This risk index approach permits an objective comparison of the situations in various communities, taking into account the actual accident experience to date. FRA is aware that there are limitations to the method. For instance, (i) the APF does not take into consideration every possible factor relevant to risk, (ii) data driving the predictions are largely from the great majority of crossings where the horn is used, (iii) a significant component of risk inherent in the formula outputs is not as relevant to evaluation of train horn risk (*i.e.*, pedestrian casualties), and (iv) adjustments to the index based on excess risk associated with silencing the horn will understate risk in some cases and overstate risk in other cases. However, FRA is not aware of a more useful methodology for evaluating comparative risks at grade crossings, and none of the limitations appears to substantially vitiate its value for this purpose.

In examining options for this interim final rule, FRA applied this methodology to known whistle ban crossings, grouping them by railroad and political jurisdiction pairs, with some segmentation to recognize that more than one rail line was present or that operational characteristics of the railroad changed markedly (*e.g.*, at a junction). As reported in more detail below, the results show that there are material differences in corridor risk among the existing ''whistle ban jurisdictions'' (on an average per-crossing basis).

FRA then performed the same calculation for all train horn crossings in the nation that are equipped with flashing lights and gates and derived an average for those crossings, which is referred to in this rule as the Nationwide Significant Risk Threshold. This measure provides a statistical tipping point by which crossings nationwide can be compared to determine the significance of the risk present. FRA's rationale for selecting this threshold as a basis of comparison was that if certain proposed quiet zones pose less risk (even when adjusted for the absence of the train horn) than the average corridor where the train horn is sounded, then the risk of not sounding the train horn in those locations might reasonably be characterized as insignificant.

During the public comment cycle, FRA also heard repeatedly from existing whistle ban communities where, it was reported, there had been no accidents for many years (or none likely attributable to the absence of an audible warning). FRA recognized that, since highway-rail crossing accidents are rare events, the absence of accidents within a period of a few years might say little about underlying risk. At the same time, FRA was aware that some communities have made a real effort to stress law enforcement and public awareness; and it seemed desirable to provide some additional flexibility to communities that have not experienced a recent accident of the kind relevant to the circumstances addressed in this rulemaking. So FRA posited that it should be reasonable to subject accident-free existing whistle ban jurisdictions to a test that might be a multiple of the Nationwide Significant Risk Threshold (NSRT). A multiple of two was selected for analysis.

In order to determine the implications of this methodology, including the two proposed thresholds, FRA applied the risk index method to existing whistle ban jurisdictions (WBJs) retrospectively. Employing accident data for 1990 through 1994 and grade crossing inventory information as of January 1, 1995, FRA categorized these WBJs by Crossing Corridor Risk Indices (CCRI) relative to the two thresholds: (1) CCRI less than NSRT, (2) CCRI greater than the NSRT with relevant collisions between 1990 and 1994, (3) CCRI between the product of one and two times the NSRT and no relevant collisions between 1990 and 1994, (4) CCRI greater than the product of two times the NSRT and no relevant collisions between 1990 and 1994. FRA posited that jurisdictions above the relevant thresholds (*i.e.*, those above the Nationwide Significant Risk Threshold with relevant collisions in the preceding five years, or with no relevant collisions but above twice the Nationwide Significant Risk Threshold) would be required to make investments to abate risk, while those below would not. To simulate the safety impacts of this approach, FRA analyzed the effect based on an artificial rule issuance date of January 1, 1995, with an effective date of January 1, 1996. FRA then analyzed actual collision history for the crossings in each category for the period 1996 through 2000.

The results (reported in detail below and on the FRA Web site) were then compared with the Nationwide Significant Risk Threshold and a value equal to two times the Nationwide Significant Risk Threshold (2xNSRT) (determined as of January 1, 1996) to evaluate the distribution of potential quiet zones derived from existing bans. FRA posited that jurisdictions above the relevant thresholds (*i.e.*, those above the Nationwide Significant Risk Threshold with relevant collisions in the preceding five years, or with no relevant collisions but above twice the Nationwide Significant Risk Threshold) would be required to make investments in SSMs or ASMs in order to abate excess risk, while those below the thresholds would not.

The analysis effectively validated the risk assessment method, demonstrating that for the subject period it would have focused public resources on whistle ban corridors where the investments would have been well spent (with resulting reductions in injuries and fatalities). It showed that in the five-year period that would have followed implementation of the rule, as of January 1, 1996, 69 percent of the casualties resulting from the relevant collisions that occurred at whistle ban crossings would have occurred in quiet zones that initially would have had to make safety improvements to retain the whistle bans (*see* table below). Those safety improvements would have substantially mitigated the casualties at those crossings.

By the end of the five-year period, the communities where 24 collisions resulting in 16 casualties occurred would have had to implement safety measures to reduce their corridor crossing risk indexes to permissible levels in order to retain their whistle bans. By the end of this five-year period, only 32 percent of the relevant collisions and 21 percent of the casualties would have occurred in communities that would not have had to implement safety measures.

Injuries resulting from collisions involving trains traveling at speeds of 25 mph or less are on average moderate compared to the critical nature of injuries that tend to result when train speeds are higher. By the end of the

five-year period, only seven percent of the more severe casualties would have occurred in communities that would not have had to implement safety measures.

The following table presents the distribution of crossings, collisions, and resulting casualties. The first data column presents the number of crossings that would have fallen into each quiet zone category on January 1, 1995. The second data column presents the number of relevant collisions (those that FRA believes could have been prevented by sounding the train horn) that occurred in the five-year period that would have followed implementation of the rule. The next two columns present the resulting casualties (fatalities and injuries combined).

As is more fully developed below, the CCRI refers to the Crossing Corridor Risk Index (the average risk for crossings in a potential quiet zone) and the NSRT refers to the Nationwide Significant Risk Threshold (which is the average risk at gated train horn crossings).

	January 1995	January 1, 1996 through December 31, 2000		
	Crossings in WBJs	Relevant collisions	Casualties	Casualties excluding injuries where max train speed < 25 mph
CCRI > NSRT with relevant collisions	865 (36%)	208 (59%)	109 (64%)	94 (78%)
CCRI > 2 * NSRT (no collisions 2000–2005)	72 (3%)	10 (3%)	8 (5%)	8 (7%)
CCRI Between NSRT & 2 * NSRT (no collisions 2000–2005)	236 (10%)	24 (7%)	16 (9%)	10 (8%)
CCRI < NSRT	1,242 (51%)	113 (32%)	36 (21%)	9 (7%)
Total	2,415 (100%)	355 (100%)	169 (100%)	121 (100%)

Therefore, FRA concluded that use of a methodology that compares the known risk in a current or prospective quiet zone to the average risk level at crossings across the nation where train horns are sounded (the Nationwide Significant Risk Threshold) provides a very rational basis for determining where silencing the train horn presents a significant risk. Moreover, FRA concluded that considering an existing whistle ban's actual accident history in that methodology (by making greater allowances for accident-free jurisdictions) provides an even better approximation of risk than does simple reliance on comparing the quiet zone's projected risk level with the Nationwide Significant Risk Threshold.

Subsequent to completion of this validation effort, FRA determined that a number of the crossings previously identified as being in ''no whistle'' status in the Chicago Region should, in fact, be removed from that list based on elections (largely by freight railroads) to sound the horn. FRA has not repeated this analysis with the smaller data set because (1) its purpose was to determine the usefulness of the method to sort corridors with greater risk from those with lesser risk and (2) whether train horns are sounded at the crossings in question is not critical to the analysis (particularly since the counter measures involved are equally useful at both categories of crossings).

D. Alternatives Considered

FRA considered several other alternatives in determining how to craft exceptions to train horn use. In reviewing the comments on the NPRM and Draft Environmental Impact Statement, FRA identified five additional alternatives for determining where train horns must sound. All of these alternatives involve the same basic environmental effects and benefits of this interim final rule: wherever the train horn sounds, the noise impacts and safety benefits will be the same; wherever the train horn is silenced, the benefits in terms of noise reduction will be the same and the same safety risks will be presented unless compensated by the addition of gates and lights, SSMs, or ASMs. Upon examination, FRA concluded that these alternatives are not reasonable options given the agency's purpose and need for the action and dismissed them from further consideration. These alternatives are described below.

No Exceptions

This alternative would implement the non-discretionary command of the statute by requiring trains horns to be sounded at all public highway-rail grade crossings. This would be what the statute would require if FRA were unable to devise a workable means of providing for quiet zones that satisfies the statute. FRA would set a maximum sound level for locomotive horns. Changes from the NPRM provisions related to the actual sounding of the horn and maximum sound levels could be accommodated within this option.

Advantages: This option has the advantage of simplicity. It would result in a high level of safety at highway-rail crossings, and the costs of administration would be negligible.

Disadvantages: This approach is not responsive to the statutory command to consider the interests of communities with existing train horn bans because FRA can devise a regulatory regime permitting communities to reduce noise by substituting other safety measures for the sounding of train horns and this option fails to address the issue. Aside from the statutory command, providing a means for communities to quiet train horns has been urged on FRA by the great majority of commenters and their elected representatives (including many who supported the proposed rule as a good means of achieving community quiet and safety). It is simply untenable to say that the final rule should provide no alternative to a high noise load for communities on rail lines with high train counts. Taking this course would also create unnecessary conflict between commuter rail service and the communities served, potentially compromising this important element of a balanced transportation system in many major metropolitan areas.

Had this alternative not been eliminated on statutory grounds, the environmental effects of this alternative

would not require separate analysis. Analysis of the effects of the ''no action'' alternative shows the effect of sounding train horns at highway-rail grade crossings across the Nation and the effects of permitting the continuation of existing train horn bans. This alternative would differ only in the elimination of the existing train horn bans, resulting in the known effects of sounding the train horn in those locations as well, including the known safety benefits flowing from sounding the train horn.

Make the NPRM Final

The Notice of Proposed Rulemaking required trains horns to be sounded at all public grade crossings; set a maximum sound level for locomotive horns; and provided an opportunity for any community to establish a quiet zone where all public grade crossings are equipped with gates and lights and data and analysis show that implementation will reduce risk in the quiet zone to sufficiently compensate for the absence of the horn sounding: by implementing one or more Supplementary Safety Measures (SSM) at each crossing (does not require FRA approval); or by implementing a combination of SSMs or Alternative Safety Measures (ASM) at some or all crossings within a proposed quiet zone with FRA approval. Communities with present whistle bans would have up to three years in which to implement SSMs and ASMs. Crossings with track speeds of 15 mph or less at which people bearing flags warn motorists of the passage of a train would not need SSMs.

Advantages: Pursuing this option would serve the interest of safety and community quiet. It would be less complex than the option selected.

Disadvantages: FRA found this option to be unacceptable because it insufficiently tailored the rule's burdens according to risk and would be unresponsive to hundreds of commenters who strongly urged improvements in the rule before its adoption. Many of those commenters live in or represent communities where the train horn is not now sounded, so being unresponsive to them would arguably be unresponsive to the statutory direction to take into account the interest of those communities. FRA agrees with those commenters that the proposed rule offered insufficient time for implementation and would have made the situation particularly difficult for public authorities and railroads in regions where impacts would be most substantial. FRA agrees with the tenor of many comments that the proposed rule would have required compensation for loss of the train horn even where risk is very low (or would be projected to be low even after the horn was silenced). The result of maintaining that requirement would have been poor cost-benefit tradeoffs for many communities. Staying with the literal text of the NPRM would also have missed opportunities for refinement of SSMs/ASMs and would not have captured noise reductions associated with the shift from distance- to time-based horn use.

The environmental effects of the NPRM were analyzed thoroughly in the DEIS and taken into account by the FRA in framing the proposed action represented by the interim final rule, which is a logical outgrowth of the NPRM.

Grandfather All Whistle Bans Existing as of 10/9/96

This alternative would allow communities that had whistle bans in effect on October 9, 1996 to retain those bans as long as the level of risk does not increase. Risk would be calculated using the APF for the entire whistle ban corridor. FRA would essentially be accepting the level of risk the community itself has determined to be acceptable—and would hold the community to that same level of risk. If a whistle ban community exceeded its risk threshold, it would have three years to implement changes (*e.g.* install SSMs) sufficient to reduce risk to below its risk threshold. Changes related to use of train horns, including the maximum sound level, could be accommodated within this option.

Advantages: This approach would have avoided conflict with current whistle ban communities and, in theory, might have capped the negative safety impacts of bans. As under the proposed rule, New Quiet Zones would be instituted without any loss of safety.

Disadvantages: This option was rejected for the following reasons, any one of which is independently sufficient: It is unresponsive to the purpose of the statute to the extent excess risk associated with existing bans would be allowed to continue unabated; it does not directly take into account predicted accident severity, and therefore does not truly consider risk (frequency times severity); the Administrator could not have made the statutorily required determination that these exceptions would not ''present a significant risk with respect to loss of life or serious personal injury;'' it would not provide a uniform level of safety across the Nation; it did not afford New Quiet Zones the same exceptions allowed for Pre-Rule Quiet Zones, thus undermining uniformity of application and requiring local authorities to expend funds on improvements for which the safety pay-back could not be reasonably assured at the system level; it would permit communities with bans to transfer costs to the society at large through insurance, public health and welfare programs, and court judgments; and administration of the approach is not technically feasible. FRA noted that factors other than silencing the train horn would typically be responsible for the growth in calculated risk in the subject communities (*e.g.*, increase in motor vehicle traffic as a result of residential or commercial development in an adjoining jurisdiction; growth in rail traffic). It did not seem sensible to permit excess risk to continue, provided nothing changes in a community, while requiring new increments of risk in other communities to be addressed without regard to whether the current level of risk is excessive (*i.e.*, FRA realized that this option did not address the right question).

The environmental effects of this option were not analyzed further because this was not a reasonable option to pursue.

Grandfather All Whistle Bans Existing as of 10/9/96—Combine Collision-Free Exemption With Severity-Weighted Single Threshold

This very complex option was a precursor to the path taken in the interim final rule. It took a much different approach to Pre-Rule and New Quiet Zones. It would allow communities with whistle bans in effect on October 9, 1996 to retain those for the first 5 years following publication of the interim final rule. Thereafter such communities could retain bans as long as: there have been no collisions within the past 5 calendar years *or* risk has not increased above a pre-established threshold calculated using the APF for the past 5 years; and at least flashing lights and gates have been provided at all such crossings. The option included a severity element in the risk computation for the threshold. A corridor risk index and national threshold would be used, as in the interim final rule. The option provided further flexibility for retaining whistle bans during the transition period as follows: A State Department of Transportation (or other authorized state-level body) could request extended implementation beyond the 5-year period on the basis that the State is assisting local jurisdictions in implementing quiet zones and requires additional time due to funding and/or administrative constraints. The following would apply: Each project

must be the subject of a filing with FRA (*i.e.*, the rule otherwise applies as revised); actual implementation of initial projects will begin not later than year four; consistent with efficient completion of required work and corridor-related safety considerations, improvements will be implemented at the most hazardous crossings first (where risk reduction opportunities are greatest) and then proceed to less hazardous crossings; no less than 25 percent of identified excess risk must be abated by the end of year five, 50 percent by the end of year six, 75 percent by the end of year seven, and 100 percent by the end of year eight; and this relief will expire eight years following publication of the interim final rule (seven years from the effective date). If a community exceeded the severity threshold in any annual review thereafter, actions would be taken as necessary to fall back below the threshold within a three-year period or the train horn would be required to sound; or actions sufficient to compensate for the loss of the train horn would have to be taken. Communities establishing New Quiet Zones would be required to follow the standards set forth in the NPRM (and would not be able to take advantage of low baseline risk, even after adjustment for loss of the train horn).

Advantages: This option would take into consideration the interests of communities with existing bans in a manner similar to interim final rule, except flashing lights and gates would be required where not present. It would set a requirement of flashing lights and gates for all crossings where the train horn is silenced, enhancing safety. It would also avoid any negative flow of safety benefits related to toleration of new unabated risk in New Quiet Zones.

Disadvantages: FRA rejected this option principally because it did not afford New Quiet Zones the same exceptions allowed for Pre-Rule Quiet Zones, thus undermining uniformity of application and requiring local authorities to expend funds on improvements for which the safety pay-back could not be reasonably assured at the system level. Further, FRA noted that the costs of flashing lights and gates in existing ban areas would be substantial, in some cases potentially resulting in loss of quiet zone status (with resulting disruption of settled expectations) due to financial inability of communities. Again, in many cases costs might not be fully recovered through safety benefits. FRA also discarded the rigid implementation schedule for Pre-Rule Quiet Zones on the ground it could not be effectively policed in an environment where local authorities would find it necessary to move to a large extent on their own schedules (albeit in some cases with State assistance). FRA also concluded that excepting Pre-Rule Quiet Zones from the requirement to make safety improvements solely on the basis of no accident history (with necessarily limited exposure) could not be supported as based on sound safety analysis (and opted, instead, for a limited exception based on both accident history and underlying estimated risk).

This option was rejected as unreasonable and its environmental effects would be very similar to the proposed action.

Require Horns or SSMs at Highest Risk Crossings Within Each State

This alternative would have required that train horns be sounded at all grade crossings except those where (1) maximum train speed is 15 mph or less and flaggers are provided or (2) a whistle ban permitted under the rule is in effect. Existing whistle bans could continue provided high risk crossings are addressed within three years. New whistle bans could be created only if crossings within them were equipped with gates and lights. No whistle ban could include a grade crossing categorized as high risk, except crossings within existing whistle bans that are remedied within three years. High risk crossings are those with an APF greater than or equal to .05 (*i.e.*, a five percent chance of an accident occurring at that crossing in the next 12 months). Where train horns are now sounded, the crossing's APF would be increased by 44 percent to account for the absence of the train horn. Within one year of the rule's issuance, any community with an existing whistle ban would have to certify that it has reviewed FRA data on effectiveness of horns, whistle ban effects, and relative merits of SSMs and consulted with affected railroads and state officials about possible safety improvements. Any community imposing a new whistle ban must first provide the same certification. Communities with existing whistle bans may continue to include crossings lacking gates and lights unless and until the crossing has an APF of .05 or more. Once a whistle ban is in effect, any crossing that reaches an APF of .05 must be remedied within two years.

Advantages: This option was viewed as attractive because it would have mandated safety improvements at very high risk crossings within a relatively short time and provided categorical relief for crossings deemed relatively low risk. It defined risk uniformly for all crossings and all jurisdictions. It is relatively simple. It defined significant risk very clearly: equal to or greater than one predicted collision every 20 years. It captured a high percentage of predicted casualties, *i.e.*, it would have addressed a high proportion of the risk presented by whistle bans.

Disadvantages: This option was rejected because: it does not directly take into account predicted accident severity, and therefore does not truly consider risk (frequency times severity); it does not permit sufficient flexibility to reduce risk within a quiet zone by dealing with crossings other than ones with the highest APF values and, therefore, does not adequately take into account the interest of communities with existing whistle bans; and it is not in harmony with the corridor improvement concept underlying the proposed rule. The statute addresses all crossings, not merely the most hazardous. The option focuses more on absolute risk rather than compensation for loss of the train horn (the focus of the law). A crossing-by-crossing approach to horn use would abandon the corridor approach to crossing safety improvements advocated by the U.S. DOT for many years (including eliminating the incentive for consolidation of redundant crossings), and it could result in very uneven results in terms of community quiet, depending on local implementation. The option could result in a patchwork of ban areas, adding to burden on locomotive engineers to pick out, crossing by crossing, where the horn must be sounded. This option could be more costly per unit of risk reduced because the community is required to take risk reduction at specified crossings rather than where means and need best correspond (*e.g.*, foreclosing the option of putting in medians at two moderate-risk crossings for a total cost of $40,000 rather than installing four-quadrant gates at one higher risk crossing for an incremental cost of $75,000–$150,000, even though the resulting risk reduction is the same).

This alternative was not considered reasonable. If the environmental effects of this option were to be considered, the noise impact of sounding a train horn at a crossing would be the same as it would be for the preferred option and the safety benefits of sounding the train horn or fully compensating for the absence of the train horn would be the same as for the preferred option.

After considering all of these alternatives, FRA settled on the risk-based methodology adopted in this interim final rule. FRA believes this

methodology best embodies Congress' intent, *i.e.*, to permit exceptions to the use of the train horn only where doing so demonstrably does not present a significant risk, or where the significant risk has been compensated for by other means.

E. Implementing the Interim Final Rule

FRA is aware that this interim final rule has the disadvantage of some degree of complexity. Designing corridor improvements that meet community needs and the criteria set forth in this rule will be hard work. In this case, FRA has sought to provide some relief from the burdens perceived in the NPRM by marrying a conceptually simple notion (the probability that a vehicle occupant will be injured or killed) with a risk assessment method that is fully accessible only to those with some statistical skills who work hard to understand it. Maintaining a current inventory of affected crossings will also require significant attention to detail.

In taking this course, however, FRA has also recognized its obligation to prepare user-friendly tools for use by local planners. These tools are now available for beta testing on FRA's Web site, and FRA has also provided the results of the preliminary calculations for communities with existing bans based on existing inventory data (as well as the assumption that the community will elect to include all crossings in a New Quiet Zone).

In FRA's experience, State and local government personnel such as city managers and county engineers are extremely capable professionals who are very unlikely to be daunted by the preparations required under this rule. Further, FRA crossing safety managers in each of FRA's eight regions will be available to work with communities and ''walk them through'' the necessary analysis, as well as participate in diagnostic teams established by State and local governments to evaluate options for safety improvements where they are required. No community will have to ''go it alone,'' because FRA will provide technical assistance.

Finally, FRA has provided a substantial extension of time for communities with existing whistle bans to convert their corridors into quiet zones without intervening disruption caused by the train horn. In response to the statute's direction to ''take into account the interest of communities'' with existing bans, the proposed rule would have allowed a maximum of three years from issuance for implementation, with the third year available to communities that had implemented some form of education or enforcement program. This interim final rule, by contrast, allows five years from its publication (four years from the effective date of the requirement to use the train horn) for implementation by individual communities. Communities had complained that the requirements of State and local budget cycles required more time for planning and securing funding. Further, it was noted that engineering improvements may require substantial lead time and that railroads may have limited staffing in relation to a compressed schedule for installing new warning systems in a number of communities on their lines. FRA agrees that an extended schedule is warranted.

Further, FRA has recognized that some States (notably Illinois and Wisconsin) have large numbers of whistle bans and that some exist in communities of concern with respect to environmental justice. In situations such as this, it may be imperative for some Federal funds to be allocated by sources for which engineering improvements are eligible (*e.g.*, the Surface Transportation Program and the National Highway System program). These allocations would be made by the State departments of transportation based on plans developed through the metropolitan planning organizations, a process that can require several years. Because of competition for uses of these funds, a State may not be able to allocate Federal funds for these purposes in a single fiscal period. Similar considerations would presumably apply to distribution of any funds made available from State sources. Accordingly, in order to create an incentive for State participation in meeting these needs (through allocation of Federal or State funds), FRA has allowed a full eight years for communities with existing whistle bans to complete quiet zone improvements if (i) the State steps forward with a plan to provide assistance, and (ii) actual improvements in at least one community within the State are effected before the end of the fourth year.

FRA is acutely aware that this extended implementation cycle could be subject to abuse. Accordingly, FRA has included in the rule procedures to ensure that good faith progress is made toward completion of improvements that communities promise to undertake. Where that does not occur, FRA will notify the railroad to sound the train horn as the rule requires.

F. Existing Bans and New Quiet Zones

FRA has endeavored to fashion a final rule that establishes as much parity as possible between communities with existing whistle bans and those that wish to establish them in the future, while recognizing legitimate differences. The rule puts both types of communities on the same footing, as follows:

- The rule starts from the premise that after a certain time the train horn will sound unless an appropriate exception is satisfied, regardless of prior practice.
- Both the ''haves'' and the ''have nots'' may establish quiet zones by implementing SSMs and ASMs sufficient to compensate for loss of the train horn; and both may take their risk reduction at the corridor level, normally without making improvements at every crossing.
- The rule allows establishment of quiet zones even without SSMs and ASMs if—

(I) In the case of an existing whistle ban corridor, risk is shown to be at, or below the Nationwide Significant Risk Threshold or be below twice that level and the corridor has had no relevant collisions during the preceding five years; or

(ii) In the case of a New Quiet Zone, risk (after adjustment to account for silencing the train horn) is shown to be at or below the Nationwide Significant Risk Threshold.

- If a community avoids expenditures related to creation of a quiet zone because it falls below the Nationwide Significant Risk Threshold and risk increases to above the threshold, the community is required to compensate for that increase in risk within a period of three years, or the railroad will be required to sound the train horn.
- All communities are subject to the same filing and inventory maintenance requirements.

Some differences in approach to existing whistle ban jurisdictions and New Quiet Zones have been necessary, as well. We have already said that existing whistle ban jurisdictions are different, as a practical matter, because public and private planners (*e.g.*, zoning officials, citizens purchasing residences, businesses locating shops) have made choices in reliance on the belief that the train horns will not sound. The statute enjoins us to take their interests into consideration, and the grace periods provided under the rule (five and eight years) maintain community quiet well ahead of community actions that would otherwise warrant that result.

The fact that existing whistle ban jurisdictions have known accident records under circumstances where the horn is not sounded also permits some additional latitude. FRA has noted significant variation in the outcomes where whistle bans have been enacted

or observed. Although some of this variation is the result of limited exposure to rare events, some of it likely reflects the existence of circumstances that are different in the communities (nighttime vs. 24-hour bans, strong or weak law enforcement, generally good sight lines or poor ones, etc.). Over time, the presence or absence of such factors will be revealed in the accident rate. An important feature of the interim final rule creates an exception for existing whistle ban communities with no recent horn-relevant accidents but with risk levels that are above the Nationwide Significant Risk Threshold but below a value equal to two times that threshold. This exception remains until the community experiences a horn-relevant accident, after which it is judged by the same standards as other communities (with a 3-year grace period if it elects to adopt SSMs or ASMs).

The issue of whether flashing lights and gates should be required as a baseline condition for a quiet zone has similar characteristics. In the NPRM, FRA specified that all crossings in any quiet zone should have flashing lights and gates based on the following practical considerations:

- At passively signed crossings, the motorist is expected to ''yield'' to oncoming trains. But the only warning of a train's approach is provided by the train itself, including the headlight and auxiliary alerting lights, and the train horn (if used).
- Because of obstacles in the ''sight triangle,'' track curvature, angle of intersection, or adverse weather, there are some circumstances where only the horn may be effective in aiding the motorist's decision.
- It is unfair to place a burden on the motorist to yield without providing the best available information to inform the decision.
- Crossings equipped with flashing lights but no gates are similarly situated, except that the motorist is expected to stop but under most State laws may proceed if ''safe'' to do so. In many cases motorists are left with ambiguous information regarding the appropriate response.

Accordingly, FRA continues to be convinced that, with respect to quiet zones where the train horn is silenced for the first time, flashing lights and gates should be provided at all public crossings. Motorists using such crossings will for the first time be deprived of auditory warnings, which would place them at significant peril if no additional warnings are provided.

However, FRA recognizes that a significant number of whistle ban crossings exist today, particularly in the State of Wisconsin, where only passive signage or only flashing lights are provided. There is now risk data specific to those situations. Further, the statute asks us to give ''special consideration to the needs'' of communities where these crossings are located, and public and private planners have made decisions in reliance on the status quo. Finally, FRA will have achieved the principal safety objective of this rulemaking if significant risk to persons associated with the absence of the train horn has been abated.

Accordingly, FRA has determined that it is appropriate to allow conversion of existing whistle ban corridors into Pre-Rule Quiet Zones without requiring that flashing lights and gates be provided at all crossings. FRA has further provided that, where the proposed Pre-Rule Quiet Zone exceeds the relevant risk threshold (making it necessary to compensate for absence of the train horn), the community may credit the risk reduction associated with installation of flashing lights and gates toward the required effort. In many cases this will not result in all crossings being so equipped, but it will encourage use of the most important single safety improvement available in the highway-rail crossing toolbox.

G. Requirements for the Train Horn and Its Use

On the effective date of that portion of this rule which mandates use of the train horn, State laws concerning use of the train horn at highway-rail crossings will be preempted. This rule will also require the modification of railroad operating rules that are in conflict with it. FRA already has in place a rule that sets a minimum horn loudness of 96 dB(A) at 100 feet in front of the train. The method for conducting that test, a possible maximum level for the horn, and the manner in which the horn is sounded have been issues in this rulemaking. In approaching this complex of issues FRA has tried to balance several considerations, specifically—

- The need to make it possible for motorists to be warned within their vehicles, with windows closed, at a point on their approach to the crossing where the information is useful; and
- The need to limit dispersal of horn noise into the community (other than at the crossing and its approaches) to the extent feasible.

Although FRA can foresee the possibility of further refinements in these decisions over the next few years as information becomes available, the comments received in this rulemaking, coupled with further research conducted in response to those comments, have provided a good foundation for resolving these issues.

The first group of issues has to do with the horn itself. FRA had hoped to describe engineering characteristics of the horn that would mitigate the dispersal of noise into the community (in railroad parlance, ''to the field''). This issue has been presented primarily due to the relocation of horns to the center of the locomotive roof, a choice made by railroads to reduce crew occupational noise exposure. At FRA's technical conference on acoustical issues, the major railroads arranged a presentation by a recognized expert who described a ''shadow effect'' produced by the locomotive profile that results in misleadingly low sound level readings at the location specified in FRA's current test procedure. The point of calling attention to this was to emphasize that in terms of actual dispersal of noise the noise levels to the field do not, in fact, exceed those to the front (as might be suggested by readings taken just 100 feet directly in front of the locomotive at only four feet above the track). The overall lesson FRA was asked to take from the presentation is that while center-mounted horns are not louder to the field than to the front, neither can they be made highly directional.

A secondary lesson from this presentation and a subsequent field study is that, by testing the horn at roof height (which under the noise models actually is more proportional to the noise received at the crossing), it may be possible to ''turn down'' some roof mounted horns. As a result, FRA adopts a new test procedure in this interim final rule that retains the 100 foot distance but places the sound level meter receptor at roof height (*i.e.*, out of the locomotive's ''shadow'').

Another objective of this rulemaking has been to set a maximum sound level for the horn. The NPRM proposed consideration of two values—104 dB(A) (which was seen as more appropriate for actively signed crossings) and 111 dB(A) (which was viewed as more appropriate for passively signed crossings). Although FRA's general rationale was reasonably well received by some commenters, many others appeared convinced that train horns are too loud and should be significantly reduced in volume. FRA has continued to evaluate the issues identified in research referred to in the NPRM, including refined analysis using signal detection theory, and is persuaded that a maximum value of 110 dB(A) should be sufficient to alert motorists in most situations,

including a small margin of error associated with test instrumentation and setup. Accordingly, the interim final rule requires that railroads progressively test their locomotives and reduce the air pressure (or alter the aperture) on all horns to produce a maximum volume of no more than 110 dB(A) as measured 100 feet in front of the locomotive at roof height. FRA expects that most freight railroads and Amtrak, whose locomotives operate over a variety of highway-rail crossings across the Nation, will set their horns near the maximum allowed to provide effective warning at passively signed crossings. FRA expects that commuter authorities which operate primarily over crossings with flashing lights and gates may set horns in the lower portion of the allowed range. This overall process, by enforcing a maximum below the known sound level of some center-mounted horns, may modestly reduce noise in some communities.

It should be noted that FRA did not find it possible to do as the NTSB suggested in its comments to the docket, which was to ''select a sound level that will maximize safety at all highway-rail grade crossings.'' To reach every driver with the horn (including each driver with a stereo turned up to maximum volume under all conditions of traffic conditions, pavement surface, weather, etc.) would require a volume so great that the effects on communities and crew members would be clearly unacceptable. However, in selecting the maximum level FRA has taken into consideration the NTSB's findings from its study of passive crossings. Further, FRA has completed additional work on sound detectability that suggests more favorable results at actively signed crossings where the driver has a heightened awareness of the possible presence of a train and where a very high signal-to-noise value should not be required. Dissemination of NTSB and FRA studies should put railroads in a favorable posture to determine horn loudness appropriate to their operating conditions, achieving the lion's share of the potential risk reduction.[3] Further, our heightened understanding of the limitations of the train horn should help clarify the need to implement of active warning systems where they are not already provided as funding becomes available.

The final issue concerns the manner in which the horn is sounded. The actual pattern of ''two long, a short and a long'' is well established, and FRA finds no reason to alter it. It is necessary to sustain the warning provided by the horn through a period of 15 to 20 seconds prior to arrival of the train at the crossing in order to reach motorists situated at various points on the roadway under varying angles of intersection and differing vehicle and train speeds. It is not possible to just give a ''toot,'' as suggested by some, and still provide the unmistakable and persuasive warning needed to deter risky motorist behavior.

FRA did note in the NPRM, however, that the traditional practice of requiring that the horn be sounded approximately one-quarter mile before the crossing is excessive when train speeds are well under about 45 miles per hour. Accordingly, FRA proposed that it might be possible to use a time-rather than distance-based criterion. Representatives of the Brotherhood of Locomotive Engineers (BLE) seized upon this suggestion in their testimony, affirming that this could be accomplished. Accordingly, the interim final rule requires that the horn must begin to be sounded between 15 and 20 seconds prior to the arrival of the train on the crossing and while the lead locomotive is moving over the crossing, but for a distance no greater than one-quarter mile (1,320 feet). This time-based approach should reduce unwanted noise without compromising the usefulness of the warning provided. Sounding the horn over a distance greater than one-quarter mile would add no value, since the loss of volume associated with the distance involved would almost certainly prevent any effective warning. FRA expects that railroads will leave existing whistle boards in place to assist engineers in estimating where to begin sounding the horn, given the speed of the train approaching the particular crossing.

H. Post-NPRM Ban Impact Studies

Following publication of the NPRM, various commenters indicated they had more accurate data and information regarding which crossings are subject to whistle bans. The Wisconsin Rail Commissioner, the Maine DOT, and the City of Chicago DOT provided a sufficient amount of new data with respect to affected crossings to warrant a revision to the FRA ''Updated Analysis of Train Whistle Bans'' (January 2000). Chicago area commenters (Hafeez and Laffey) also performed an independent study of the effects of whistle bans in the Chicago Region and concluded that whistle bans do not affect accident frequency in the Chicago Region. Commenters from Wisconsin indicated that there were a significant number of whistle ban crossings in Wisconsin that did not have active warning devices but had good safety records.

FRA therefore contracted with Westat, Inc., a nationally respected statistical research firm. The purpose of the Westat Inc., contract was to: (1) Revise the 2000 FRA analysis of whistle bans to reflect the more accurate data received post publication of the NPRM, (2) obtain independent, expert review regarding FRA's methodology, and if necessary, recommendations as to ways to improve it; and (3) evaluate the points raised by representatives from the Chicago Region and the State of Wisconsin by performing regional studies of the effects of whistle bans in the two areas.

Westat—2002

In the initial effort, Westat, Inc., utilized the same study period as FRA's update (1992–1996) (Zador, Paul L., April 1, 2002). The methodology employed was a refinement on FRA's stratified method comparing accident histories of crossings with similar predicted risk. Westat concluded that on a nationwide basis (excluding Florida), adverse whistle ban effects were statistically significant at levels well below the conventional significance level of 5 percent, regardless of warning device class. All three classifications of warning devices experienced a higher accident rate in whistle ban areas as follows (National data excluding Florida only and excluding Florida and the Chicago Region):

Warning device class	Percent difference	
	(with Chicago)	(excluding Chicago)
Passive	52.6	64.2
Flashing Lights	43.2	69.1
Gates	44.4	57.6

FRA had asked Westat to attempt regional analysis where the crossings appeared to be sufficiently numerous to permit at least some comparisons (*i.e.*, Wisconsin and the Chicago Region). Data for Wisconsin generally indicated an increase in accident risk for each type of warning device with bans in place, whether the Wisconsin whistle ban crossings were compared with other similar Wisconsin crossings or with

[3] The NTSB's Passive Crossing Study has been construed by some as an attack on the safety value of the train horn because it cited examples of situations at passively signed crossings in which the horn's signal-to-noise ratio likely did not meet a pre-established criterion. Neither the NTSB's report nor its comments in this docket question whether the horn is effective in preventing some accidents. Rather, the NTSB has ventured the conclusion that certain accidents have occurred at passively signed crossings where the horn did not provide a sufficient warning given the background noise and other factors. FRA's position in this rulemaking is consistent with this conclusion.

similar crossings nationally. Westat found, that in Wisconsin, due to the relatively small sample sizes, estimates for ban effects were not statistically significant at the conventional 5 percent level, with one exception. The accident rate for passively marked whistle ban crossings in Wisconsin was 84 percent higher than for passively marked crossings nationwide (excluding Florida and the Chicago Region) where train horns were sounded. This result was statistically significant. However, model fit was determined to be poor.

In reviewing the data for the Chicago Region, Westat found several unexpected results. Comparisons of Chicago train horn and ''whistle ban'' [4] crossings within Chicago indicated higher accident rates at crossings where the train horn was used, but the data did not fit the model well (with the upper confidence limits for two of warning types well into the positive range).

When Chicago Region ''whistle ban'' crossings were compared with similar crossings in the Nation where train horns sound, results for passive and flashing lights categories again showed lower accident rates at ban crossings; however, estimates for the effects of no-whistle policies were not statistically significant at the conventional 5 percent level. The accident rate for gated whistle ban crossings in the Chicago Region was 34 percent higher than for gated crossings nationwide (excluding Florida and the Chicago Region) where train horns are sounded, and this result was statistically significant.

With respect to the gated crossing estimate for Chicago, Westat stated that the weight of this evidence was weakened by the fact that the model did not fit the data well. Specifically, in the Shapiro-Wilks test for normality of deviance residuals, the normal hypothesis was rejected for gates based on comparisons with the Continental U.S., Florida and Chicago Region Excluded.

Westat—2003 (Final Study)

FRA found the results of the 2002 Westat study appeared to reinforce inferences FRA was deriving from other information related to the Chicago picture that may explain the Chicago data. In particular, FRA had noted that significant ''discretionary selection'' had occurred in the Chicago Region with respect to the crossings at which ''no whistle'' policies would be implemented. That is, horns were being silenced primarily at crossings that were inherently safer than others. Further, FRA noted that a growing body of information supported the conclusion that several hundred crossings initially believed to be impacted by a no-whistle policy either had never been in that status or had not been for several years. (How this occurred is more fully discussed under ''Chicago Region'' below.) Accordingly, FRA commissioned Westat to do further work, resulting in the final study on the impact of train horn bans (Zador, Paul H., June 2003). The design for this study differed in three important respects from the earlier work:

1. The set of Chicago Region ''no whistle'' crossings was corrected to a much lower number based upon docket filings from the Illinois Commerce Commission, the AAR and Metra.

2. The study period was brought forward to address the most recent complete accident data contemporaneous with known crossing status (1997–2001).

3. Rather than simply employing the previous FRA method with refinements, Westat was asked to apply whatever statistical techniques it thought appropriate to derive the most valid results.

FRA received the Westat final report in May of 2003. In an attempt to determine the most meaningful explanation of the data, Westat applied four distinct statistical methods, with certain variations within the methods:

- The first method divided the crossings into two groups: one group with whistle bans and the other without. FRA's basic Accident Prediction Formula (APF) was applied to each crossing and then each group was sorted by the results of the APF. Then each group was stratified into ten categories with each stratum having the same accident count for the 1997–2001 study period. Finally, using both Poisson and Poisson-Normal regressions, the two groups were compared and the effect of the whistle ban was estimated.
- The second method is the same as the first except six strata were used instead of ten.
- The third method did not divide the data into two groups and stratify them. Instead, a Poisson regression analysis was applied to the entire data set. The regression included all the variables used by the APF plus others including a 1/10 flag for whistle bans. The regression coefficient for the whistle ban was used to estimate the effect.
- For the fourth method, a Poisson regression analysis was applied to the entire data set in a manner similar to the third method except the 1/10 flag for whistle bans was not included. This regression yielded a revised version of the APF. Then, the crossings were divided into two groups (with and without whistle bans), and each group was divided into ten strata using the revised version of the APF. Finally, using Poisson-Normal regressions, the two groups were compared and the effect of the whistle ban was estimated.

On a nation-wide basis, the third method produced the most precise estimates for the effect of the whistle ban, so FRA has selected this method as the basis for its evaluation.

Once again, all three classifications of warning devices experienced a higher accident rate in whistle ban areas as follows (National data excluding Florida only and excluding Florida and the Chicago Region):

Warning device class	Percent difference	
	(with Chicago)	(excluding Chicago)
Passive	71.6	74.9
Flashing Lights	21.7	30.9
Gates	43.4	66.8

The results for the Nation without Chicago provided the most reliable data. The results for passive and gated crossings were statistically significant well below the conventional 5 percent level. The model offered less confidence for crossings with flashing lights (Prob > [t] = 0.08), but the estimate is consistent with the results of FRA studies for the earlier period and represents the best information available regarding the effect of bans on the accident rate. Accordingly, FRA has employed the results for the Nation excluding Chicago as the national estimates of effectiveness for crafting this interim final rule.

The 2003 Westat report also attempted to derive results for the State of Wisconsin. Results differed substantially between intra-State and Wisconsin-to-national comparisons, even though all values showed a positive effect from the train horn and two of the three warning device categories had significant results in each of the analyses. FRA sees no basis for deviating from the national averages for the warning device categories without a better qualitative understanding of any underlying differences in risk profiles.

The Chicago Region results are briefly summarized here and then discussed in full context and at greater length below. The no-whistle crossing set provided to Westat included only 21 crossings with flashing lights and 21 passively signed crossings. As Westat noted, that is too few crossings from which to derive

[4] As noted below, this is really a misnomer. There are no train horn bans in the Chicago Region, only exemptions that railroads may utilize if they wish.

statistically meaningful results, and none were determined. FRA will apply the national estimates of ban-induced accident increases for passive crossings and flashers-only crossings to the Chicago Region.

Westat's calculations for the Chicago Region once again showed a negative effect from use of the train horn at gated crossings when only Chicago Region crossings were included in the analysis, but results were not statistically significant. For reasons more fully developed below, this result was expected, since railroads in the Chicago Region have been free to select which exemptions to observe and which to ignore.

However, Chicago gated no-whistle crossings experienced 17.3 percent more accidents when compared with the national gated crossings where the train horn sounded. This result was not statistically significant at the conventional 5 percent level, but it is more likely than not that the value is positive (P > [t] = 0.312). Comparing this result with the national data, Westat noted that ''the ban effect in the Chicago Region is significantly different from the ban effect in the rest of the nation.'' Taking note of this finding and other information discussed below, FRA will apply a 17.3 percent estimate of ban-induced excess risk to gated crossings in Chicago Region Pre-Rule Quiet Zones. FRA will apply the national average for gated crossings (Chicago excluded) to New Quiet Zones in the Chicago Region. The rationale for this decision is more fully developed below.

BAN EFFECTS/TRAIN HORN EFFECTIVENESS

[Summary Table]

Warning type [1]	Effect of ban (includ. no-whistle policy) on accident frequency (percent increase) [2]	Reduction required from ban risk to retain Pre-Rule QZ (percent reduction and factor) [3]	Comment
Nation (Except Florida East Coast Ry./and Chicago Region)			
Passive	74.9	43 (.43)	
Flashers only	30.9	27 (.27)	
Flashers with gates	66.8	40 (.40)	
Chicago Region			
Passive	74.9	43 (.43)	From national avg.
Flashers only	30.9	27 (.27)	From national avg.
Flashers with gates	17.3	15 (.15)	Regional estimate.
Florida East Coast Railway (FEC) [4]			
Flashers with gates	To be determined	Not applicable	Regional estimate subject to review.

Table Notes:

[1] These are the primary warning device types. FRA is aware that a variety of arrangements are in place at individual crossings and will provide guidance for association of the various arrangements with these benchmark values.

[2] This is the amount by which accident frequency has been estimated to increase when the horn is silenced.

[3] This is the reduction in collision frequency that must be achieved in order to restore crossings impacted by a ban to the level they would experience if the horn sounded. To simplify, if 10 accidents of equal severity were expected in a ban area with gated crossings, a reduction of .40 would be required—to a level of 6 accidents—in order to retain the Pre-Rule Quiet Zone (unless a smaller reduction in accidents would place the Quiet Zone Risk Index below the NSRT). As a matter of technical practice, the factor is applied to the crossing's risk index.

[4] Crossings on the FEC are currently subject to Emergency Order No. 15. FRA had found an alarmingly large increase in the accident rate when nighttime bans were imposed at crossings with flashing lights and gates.

10. Funding

A number of commenters expressed concern that the NPRM was silent as to potential funding sources for implementation of the proposed rule. Generally, commenters indicated that without additional funding being made available, quiet zone implementation would be beyond the financial reach of many communities. Several commenters suggested that the Federal government should provide the funding necessary to implement quiet zones, while other commenters suggested that the operating railroads should provide the funding or that the costs should be shared among some or all interested parties (including Federal, State, and local governments, as well as railroads, shippers, and other users of the rail system).

Several individuals and local governments, citing local budget constraint concerns, suggested that if the Federal government is going to require additional safety measures at highway-rail crossings, then the Federal government should provide the funds for such measures. One individual representing a group of Massachusetts families suggested that the costs of safety at highway-rail crossings should not be the sole burden of communities abutting the railroad, because the general public uses highway-rail crossings. This individual suggested that the NPRM effectively proposes a tax on innocent citizens to protect those who willfully violate traffic laws by illegally proceeding around grade crossing safety devices in attempts to ''beat the train.'' A few individuals suggested that the costs of implementing quiet zones should be shared among the Federal government, railroads and local communities. One of these commenters further recommended that because the rail system is a national resource, the resulting noise impacts are a national issue. Accordingly, this commenter suggested that communities disproportionately affected by railroad noise should not have to provide a disproportionate amount of funding to solve the problem of railroad noise. This commenter recommended the development of a formula to effectively normalize the amount of funding communities would be required to contribute to the implementation of quiet zones within their jurisdictions, based on norms present throughout the United States.

Other individuals commented that because the impact necessitating the

proposed rule has resulted from railroad operations and the railroads are the parties that profit from rail operations, any mitigation measures should be the responsibility of the railroads themselves. In addition, one local Sacramento, California business suggested that implementation of quiet zones would result in lower insurance and litigation costs for railroads, and thus, railroads should share in the costs of implementation.

Although most local governments indicated that due to existing budget constraints, implementation of quiet zones would be very difficult without the allocation of additional Federal funds, some local governments did provide ideas for alternative sources of funding. For example, the City of Moorhead, Minnesota has set up a special downtown taxing district to fund the safety measures necessary to implement a quiet zone. The City of Miami Springs, Florida, proposed imposing a user fee, similar to that of airlines, for both passenger and freight rail traffic. Other local governments proposed imposing local property taxes on railroad right-of-ways to help fund safety improvements in order to implement quiet zones (a measure that would be prohibited by 49 U.S.C. 11501 which bans discriminatory taxation of railroads).

Two Colorado municipalities, the City of Brighton and the City of Fort Collins, requested confirmation that quiet zone crossing safety measures qualify for Federal Highway Administration (''FHWA'') funding. Another Colorado municipality, the City of Winter Park, requested that either new Federal funding for implementation of quiet zones be made available or the current Federal crossing safety program be expanded to include crossing improvements necessary to implement quiet zones.

Although every commenting State also expressed concern regarding potential funding sources, citing a general lack of availability of State funds, some States specifically recommended against allocating Federal safety funds to finance the implementation of quiet zones under the proposed rule. Specifically, both the North Carolina Department of Transportation (''DOT'') and the Ohio Public Utilities Commission (''OPUC'') indicated that the proposed rule is directed at quality of life issues, not highway-rail grade crossing safety. Accordingly, each agency strongly recommended against the use of Federal safety funds to finance safety measures necessary to implement quiet zones. In its comments, OPUC specifically expressed the belief that funding for projects in connection with the establishment of quiet zones should not come at the expense of the State's ongoing grade crossing safety programs. OPUC stated that ''[g]rade crossing safety must not be compromised at some crossings in exchange for relative peace and quiet at a handful'' of other crossings. Thus, OPUC argued that funds already committed to traditional grade crossing safety programs should not be used to fund quiet zone projects. Likewise, the Illinois Commerce Commission stated that the proposed rule would distort the State's multi-year grade crossing safety enhancement planning process and force the State to redirect needed funding from important safety projects to what the agency described as ''Federally mandated noise suppression projects.''

In addition, explaining that the cost of SSMs will be prohibitive to many State DOTs and many communities, the North Dakota DOT suggested that the proposed rule would increase demand for already limited Federal safety funds if such funds are made available to finance the installation of safety measures under the proposed rule. Accordingly, the North Dakota DOT specifically recommended against the use of Federal safety funds to implement quiet zones. The New York DOT, on the other hand, requested that additional Federal safety funds be made available to implement projects under the proposed rule.

Railroad industry participants expressed the view that railroads should not be responsible for the costs of installing, maintaining, or repairing, the additional safety measures required to implement quiet zones under the proposed rule. These commenters suggested that funds be made available through the relevant highway authorities or the FHWA. One commenter, the American Public Transportation Association, specifically requested that FRA address this issue in a joint rulemaking with FHWA.

Despite the wishes of the commenters, Federal funds have neither been authorized nor appropriated specifically for implementing this rule. Indeed, 49 U.S.C. 20153(A)(3) specifically provides that SSMs are ''provided by the appropriate traffic control authority responsible for safety at the highway-rail grade crossing * * *.'' While there are no dedicated funds set aside for the costs incurred in developing and implementing a quiet zone under this rule, there are several categories of transportation funding available that may be used by States and localities for this purpose. FRA wishes to emphasize that at the outset that it is unlikely that most improvements undertaken under this rule would withstand the priority ranking requirements for safety projects under Federal-aid highway programs, since the improvements may be approximately neutral with respect to safety (as compensation is made for the additional risk associated with silencing the train horn). However, those funds constitute only 10 percent of one of the two major programs. Further transfer between the two programs may be possible. Further detail on Federal-aid programs follows:

The Transportation Equity Act for the 21st Century (TEA–21) was enacted June 9, 1998 as Public Law 105–178. TEA–21 authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period 1998–2003. TEA–21 is the current legislation that funds both the Surface Transportation Program and the National Highway System Program. The Surface Transportation Program consists of a 10 percent safety set-aside and the balance of the program, which is intended for general transportation improvements off the National Highway System.

The requirements for the Highway-Rail Grade Crossings and Hazard Elimination Programs are defined in sections 130 and 152, respectively, of Title 23, United States Code. Projects funded with ''Section 130'' funds (23 U.S.C. 130) are intended to reduce the number and severity of train collisions with vehicles and pedestrians at highway-rail grade crossings. Typical projects include active warning devices (*e.g.* flashing lights and gates), signing and pavement markings, illumination, crossing surface improvements, grade separations, sight distance improvements, geometric improvements to roadway approaches, and the closing and/or consolidation of crossings. All public grade crossing safety improvements are eligible for funding under this program, but obligation of funds is subject to strict requirements for ranking the priority of projects on a State-wide basis. Although use of section 130 funds for projects under this rule will be warranted only where those improvements exceed the minimum targets for risk reduction set by this rule and where the projects are legitimately ranked as top priorities within the State, it is important to remember that the bulk of the approximately $4.1 billion expended under the section 130 program since 1974 has been used to improve crossing safety on city and county roads across the Nation, including in whistle ban jurisdictions. Indeed, the automatic warning systems required by several States as a predicate

for whistle bans-—and which are required in this rule for New Quiet Zones—were in most cases installed with primarily Federal funds. Thus prior Federal funding has already assisted local governments to some extent in preserving Pre-Rule Quiet Zones and creating New Quiet Zones.

''Section 152 funds'' (23 U.S.C. 152 (Hazard Elimination Program) are intended to implement safety improvement projects to reduce the number and severity of crashes at hazardous highway locations, sections, and elements on any public road. Typical projects include intersection improvements (channelization, traffic signals, and sight distance); pavement and shoulder widening; guardrail and barrier improvements; installation of crash cushions; modification of roadway alignment; signing, pavement marking, and delineation; breakaway utility poles and sign supports; pavement grooving and skid resistant overlays; shoulder rumble strips; and minor structure replacements or modifications. It is important to note that grade crossing improvements can be funded under section 152 if they are identified in a State's hazardous location survey.

The difference between the sum of the funding levels for sections 130 and 152 and the overall 10 percent safety set-aside in STP is in a category called ''Optional Safety Funds'' and is eligible for use in either section 130 or section 152. In FY 2000, there was a total of $368 million available in Optional Safety Funds, but only $21 million (or 6 percent) was used on section 130 grade crossing safety enhancement. Clearly this is an area where States can be encouraged to change the mix of safety projects advanced using this funding to accommodate more grade crossing safety improvements.

It should be noted that 90 percent of the STP funds are available for general use. Local Metropolitan Planning Organizations, working with the State departments of transportation, help determine how those funds should be allocated. As FRA was advised by commenters in this proceeding, community transportation needs differ. Without question, engineering improvements under this rule would constitute eligible projects deserving of consideration for use of this 90 percent share.

Under section 1103(c) of TEA 21, an amount of $5,250,000 per year was set aside from STP funds, and this funding is to be used for projects on designated high speed passenger rail corridors. Should a quiet zone be desired on a portion of such a designated high speed corridor, such funds could be used as a part of the overall high speed corridor improvement project. Given the relatively small amount of funding available under section 1103(c), it is perhaps unlikely that any quiet zone improvements would rise to the top of the list on any such corridor. However, note that there is a strong compatibility between the kind of safety improvements desired for high-speed rail corridors (''sealed corridor'' treatments) and the supplementary safety measures identified in this rule.

Transfers of funds from other categories into the STP are permitted, and any such transfers are not subject to STP set-asides or suballocations.

- Up to 50 percent of National Highway System (NHS) apportionments may be transferred to the STP; indeed, up to 100 percent of NHS funds may be transferred to STP if approved by the Secretary of Transportation, and if sufficient notice and opportunity for public comment is given.
- Up to 50 percent of Interstate Maintenance apportionments may be transferred to STP.
- Up to 50 percent of Bridge Replacement funds may be transferred to STP.
- Funds apportioned to the Congestion Mitigation and Air Quality (CMAQ) Program may also be transferred to STP, subject to the following conditions. Up to 50 percent of the amount by which the CMAQ apportionment for the fiscal year exceeds the amount that would have been apportioned to CMAQ for that fiscal year if the program had been funded at $1.35 billion annually may be transferred to STP. Transferred CMAQ funds may only be used in air quality non-attainment and maintenance areas.

Finally, please note that, with respect to roadways on the National Highway System, improvements would be eligible for funding out of the NHS.

The subject matter of this regulatory proceeding is the use of the train horn at highway-rail crossings, not the development of appropriations requests. Accordingly, FRA neither endorses nor argues against earmarked Federal funding for this purpose. FRA does note that, in general, State and local governments have argued against categorical transportation programs and in favor of broad block grants over which recipients could exercise full control. As reflected above, to a large extent that has become Federal policy. Whether any deviation from that policy is warranted by the fiscal impacts claimed to be associated with this rule is a matter for review in other forums. Accordingly, FRA's principal response to those arguing for Federal funding has been to ensure, to the extent practicable, that any expenses attributed to establishing Quiet Zones are no greater than necessary to maintain safety.

As this interim final rule was being drafted, the Congress and the Administration were preparing to address the reauthorization of surface transportation programs (extending or replacing TEA–21). That process was being complicated by reduced revenues, confirming FRA's conviction that this interim final rule should allow additional time for implementation of the rule. Although it is possible that the program structure outlined above may be reorganized significantly in new legislation, FRA does not expect any resulting reduction in the flexibility afforded to the States (working with local Metropolitan Planning Organizations) to affect the utilization of Federal transportation funds.

11. Liability

Several commenters noted that the NPRM was silent as to the issue of liability when an accident occurs at a highway-rail grade crossing within a quiet zone established in accordance with the rule. The New Jersey Department of Transportation (''DOT'') explained that consideration should be given to how liability issues presented by the rulemaking will affect public safety. Several commenters suggested that legislation was necessary to prohibit lawsuits by anyone injured while circumventing highway-rail grade crossing safety devices within quiet zones. The Massachusetts town of Manchester-by-the-Sea commented that the NPRM appeared to be a paternalistic effort directed towards those who willfully violate traffic laws and illegally proceed around grade crossing safety devices. This commenter also expressed concern that railroads may be reluctant to agree to implementation of quiet zones under the rule for fear that it would increase their risk of liability if an accident did occur at a crossing within a quiet zone where the railroads did not routinely sound their locomotive horns. Manchester-by-the-Sea suggested that when there is willful conduct by a motorist or pedestrian that jeopardizes his life or those of others, *e.g.*, proceeding through activated gate crossing devices, railroads and local communities should not be subject to liability if an accident occurs. Accordingly, the Town recommended that FRA work with Congress to codify limits to the liability of railroads and communities when those who willfully violate traffic or trespassing laws are injured at rail crossings within a quiet zone. Similarly, a Wisconsin State

legislative representative suggested that local communities should not be liable for accidents occurring at grade crossings within quiet zones established under the rule.

The North Carolina DOT suggested that communities pursuing quiet zones in their jurisdictions should enter into agreements with the relevant State and operating railroads agreeing to hold harmless the State and railroads for any accidents or injuries that occur as a direct result of these quiet zones. This same commenter emphasized that the communities implementing quiet zones should assume all of the risk associated with the quiet zones.

Commenters from the railroad industry strongly advocated that municipalities seeking the establishment of quiet zones under the rule should assume liability for all accidents that occur at crossings within the quiet zones. Citing the historical sounding of locomotive horns as a safety feature of railroads for the past century, the Florida East Coast Railway argued that if a community insists that it cease the sounding of the locomotive horns when traveling through its jurisdiction, then that community should be willing to accept the liability associated with the decision. The American Public Transportation Association projected that passage of a rule permitting quiet zones as proposed in the NPRM would probably lead to increased insurance premiums for railroads.

Another concern raised by several railroad industry participants, as well as an individual locomotive engineer, was the fact that State law often imposes liability on individual members of train crews and their employers when a train does not sound its horn at a highway-rail crossing and an accident occurs. These commenters contended that nothing in the NPRM would remove liability from individual train crew members or their employers for failure to sound the locomotive horn in the event of an accident in a quiet zone established pursuant to the rule. A representative of the Wisconsin Central System suggested that the rule should clearly state that failure to sound the locomotive horn in a FRA approved quiet zone could not serve as a basis for imposing civil liability on either the train crew or the employing railroad.

FRA appreciates the legitimate concern of the commenters regarding liability issues surrounding creation of quiet zones under this rule. We note that the proposed rule would have had the effect of relieving individual train crew members and their employers from liability for failure to sound the locomotive horn. The proposed rule clearly provides that establishment of a quiet zone created no legal duty to sound the horn in emergency situations. Because the rule clearly covered the subject matter of such a duty, it would have prevented State laws imposing such a duty. FRA does not expect that lawsuits will never arise over collisions which may occur at crossings within quiet zones, nor should FRA attempt to prohibit such suits since the cause of such collision may in fact be due to factors other than the lack of an audible warning. However, this rule is intended to remove failure to sound the horn as a cause of action in such lawsuits involving crossings within a quiet zone. We expect that the courts will determine liability issues based on the facts of each case and after reviewing the nature of this rule and its Federal requirements.

We expect that courts, following *Norfolk Southern* v. *Shanklin,* 529 U.S. 344 (2000) and *CSX* v. *Easterwood,* 507 U.S. 658 (1993), will conclude that this regulation substantially subsumes the subject matter of whether trains must sound warning devices at highway-rail grade crossings and, therefore, preempts state law on that subject.

FRA perceives no reason why establishment of quiet zones under this rule should result in higher insurance premium costs for railroads. In fact, a quiet zone under this rule should be evaluated as much less of an underwriting risk than a current whistle ban.

12. Wayside Horn

During FRA's initial outreach process prior to issuing the NPRM, several commenters asked whether placement of a wayside horn (a horn at the crossing and directed at oncoming motorists) might be entertained as a supplementary safety measure. FRA also received comments in the docket and at the public hearings on this subject. It is apparent that there is interest in using such a device as an alternative means of providing an audible warning to the motorist of an approaching train.

A wayside horn system would typically consist of horns mounted on poles that are placed at the crossing. A horn would be directed towards each direction of oncoming vehicular traffic. The system would be activated by the same track circuits used to detect the train's approach for purposes of other automated warning devices at the crossing (flashing lights and gates) and would produce a sound similar to the horn signal given by an approaching train.

At FRA's direction, the Volpe National Transportation Systems Center conducted an initial evaluation of two wayside horn installations at Gering, Nebraska in 1995 (*Field Evaluation of a Wayside Horn at a Highway-Railroad Grade Crossing*, Final Report, June 1998). This evaluation noted that use of the wayside horn in lieu of the train horn reduced net community noise impacts. The evaluation also showed a 52 percent reduction in the number of incidents in which motorists continued to drive over the crossing after the warning device's gate arms had started to descend as compared to the baseline data collected with the train horn sounding. There was no significant difference between train horns and wayside horns for motorists that drove around lowered gates. While the report indicated improved driver behavior with the wayside horn, the report also contains analysis that suggests questions regarding the effectiveness of that particular installation in alerting motorists that should be answered before implementing wayside horns as a substitute for train-borne horns. Further, this evaluation did not contain adequate data or analysis to permit a determination of whether a wayside horn could fully substitute for a train-borne audible warning and additional evaluations at other sites should be performed. The NPRM suggested three questions related to the effectiveness of the wayside horn:

1. Does the particular system provide the same quality of warning, determined by loudness at appropriate frequencies, within the motor vehicle while it is approaching the motorist's decision point?

2. As currently conceived, a single stationary horn cannot give the motorist a cue as to the direction of approach of the train or trains. To what extent does this lack of directionality detract from the effectiveness of the warning? Can wayside installation design be altered to compensate?

3. To what extent will the stationary horn suffer from the lack of credibility sometimes associated with automated warning devices, due to the fact that it is activated by the same means? Over what period of time may this problem arise, if at all?

Since the installation of the original wayside horn system in Gering, NE, several other communities have installed wayside horns. These sites include: Ames, Iowa, Parsons, Kansas, Wichita, Kansas and Richardson, Texas. Additionally, other communities have had temporary test installations of the wayside horns.

This topic generated a number of comments from various parties. Additionally, the departments of

transportation from Iowa, Nevada, Missouri and Florida all supported the inclusion of wayside horns as substitutes for train horns. The Brotherhood of Railway Signalmen (BRS) cited design flaws as an impediment to the effectiveness of wayside horns. The BRS also stated that if wayside horns were permitted by FRA, it would be imperative that the track circuits be used to detect the train's approach. The BLE stated that it felt that additional testing should be required before acceptance of the wayside horn.

Generally, commenters voiced strong support for the inclusion of wayside horns as a supplementary safety measure under the rule. States and local governments in particular, with the exception of the California Public Utilities Commission (CPUC), were in favor of including wayside horns as a supplementary safety measure. In support of their positions, these commenters cited the Volpe Center study and an Iowa Department of Transportation study, both of which have shown reductions in gate violation frequency with use of wayside horns. The cities of Gering, Ames, and Wichita all supported inclusion of wayside horns as a substitute for locomotive horns. They expressed the view that there was great community support for wayside horns and felt that safety was improved. Ames, Iowa wrote ''* * * it [wayside horn] has tremendously improved the quality of life and safety for our residents.'' It is noted that Ames has installed wayside horn systems at three additional crossings. The city administrator for Gering, Nebraska also wrote that he had never received so many unsolicited ''thank you'' calls and letters from citizens as he had over the installation of wayside horns. These same commenters, along with at least one representative of the railroad industry, also indicated that they believed that wayside horns provide a more cost-effective alternative to train horns, than some of the other supplementary safety measures included in the NPRM. The Florida Department of Transportation (''DOT'') suggested that wayside horns be used in instances where it is impossible or impractical to install the supplemental safety measures articulated in the NPRM. The Florida DOT, however, did not elaborate on the rationale for limiting the use of wayside horns to situations where the installation of the identified supplemental safety measures is impractical or impossible.

The AAR suggested that there is more certainty regarding the effectiveness of the wayside horn than there is for the non-engineering measures included in the NPRM as alternative safety measures. In support of its assertion, the AAR submitted a copy of its report entitled *Wayside Horn Sound Radiation and Motorist Audibility Evaluation* that found that the latest model of wayside horn was louder than previous versions and concluded that wayside horns are a viable alternative to locomotive horns for audible warnings at highway-rail grade crossings. However, recognizing FRA's misgivings about the wayside horn noted in the NPRM, the AAR suggested that if FRA could not definitively determine the effectiveness of the wayside horn prior to issuance of the final rule, FRA should permit use of the horns as supplementary safety measures at grade crossings subject to two conditions: (1) Concurrence of the railroads operating at the crossings, and (2) demonstration of the efficacy of the horns at each crossing at which they would be installed.

The CPUC, however, asserted that there is currently insufficient evidence that the wayside horn can provide protection comparable to locomotive horns and opposed the use of wayside horns as a supplementary safety measure until further data on the effectiveness of the horns is collected. Other commenters voicing opposition to the use of wayside horns for the same reason included the BLE and the BRS.

In response to FRA's first specific question posed in the NPRM—whether wayside horns provide the same quality of warning within the motor vehicle as a locomotive horn while a train is approaching the motorist's decision point—a few commenters suggested that the wayside horn gives equal or greater audible warning. For example, the City of Wichita, Kansas, suggested that a wayside horn provides a uniform quality of warning within a motor vehicle because while wind, neighboring buildings, houses, fences and trees all affect the quality of warning of the locomotive horn on a motorist at a crossing, only wind would have an effect on the quality and uniformity of the warning of a wayside horn. Other commenters suggested that wayside horns provide consistent decibel levels directed exactly where motorists are driving (*i.e.*, at the crossings, not down the tracks). The City of Roseville, California, cited a local wayside horn test that showed consistently higher audible warnings directed at the crossing, while reducing the noise impact to the surrounding communities.

In response to FRA's second question—whether the lack of directionality from a wayside horn detracts from the effectiveness of the warning—commenters supporting the use of wayside horns generally agreed that the apparent lack of directionality does not detract from the effectiveness of these audible warnings. Wichita pointed out that as motorists approach rail crossings they often hear train horns from nearby crossings on different rail lines so it is not clear from which direction the train is coming anyway. The Kansas DOT suggested that the issue of direction is moot since wayside horns are used in combination with other automated warning devices (*i.e.*, gates, flashing lights) and that when crossing gates are down, motorists are supposed to stop and wait for the train to pass, regardless of the direction in which the train is traveling. The Missouri Department of Economic Development suggested that wayside horns would encourage motorists' compliance because drivers cannot tell how far away from the crossing the train is by the sound of the wayside horn.

Only one commenter responded directly to FRA's third question—whether the wayside horn would suffer from the lack of credibility sometimes associated with automated warning devices due to false activations of the signal system. Wichita suggested that the annoyance associated with a wayside horn sounding in connection with an active warning system's false activation may cause earlier public reporting, and thus quicker railroad response to the problem location.

Several additional studies have been conducted on the wayside horn since the initial study in Gering, NE. Ames, Iowa. One study (*Evaluation of an Automated Horn Warning System at Three Highway-Railroad Grade Crossings in Ames, Iowa,* by Gent, Logan and Evans, 2003) documented the reduced noise impact to the community, public acceptance of the horn system through surveys of residents and motorist, and locomotive engineer opinions that the system was safe or safer than the locomotive horn (obtained through surveys). No data on actual driver behavior at the crossings were collected in this study. This study did not analytically address any of the three questions posed by the Volpe study.

The *Wayside Horn Sound Radiation and Approaching Motorists Audibility Evaluation* (Mike Fann and Associates, May 2000) examined the sound levels and frequencies emitted by the wayside horn. This research collected data that showed that system that was tested provided a sound level of 98 dB at 100 feet from the wayside horn. The sound level that was produced met FRA's regulation for a locomotive horn that

requires a minimum sound level of 96 dB at 100 feet from the front of the locomotive. The study also measured the frequency content of the wayside horn and using signal detection theory indicated that 99 percent of drivers with only a partial anticipation of a train event should hear the warning. No data were collected on actual driver behavior. This study provides information towards answering the first question suggested by the Volpe study. The sound level measured for the wayside horn meets FRA sound level requirement. Signal detection theory and measurement of the frequencies contained in the wayside horn indicate that the driver should be able to hear the wayside horn. Neither the Ames nor Fann study addresses questions two and three concerning directionality and credibility of the warning.

Texas Transportation Institute of Texas A&M University, was engaged by a manufacturer of a wayside horn system to revisit one of the crossings in Gering, NE to assess the level of driver compliance with the warning system after approximately six years of operation. Video data of driver behavior at the crossing was collected for 16 days. Driver compliance with the warning devices was then analyzed in the same manner as the 1995 Volpe study. The study, entitled *A Safety Evaluation of the RCL Automated Horn System* (Roop, May 2000), showed that after six years of operation of the wayside horn that driver compliance with the automatic warning devices at the crossing (flashing lights with gates) was slightly better than the baseline driver behavior observed when the locomotive train horn was used. It should be noted that there was a noticeable decrease in driver compliance with the use of the wayside horn from 1995 to 2000. However, driver behavior in 2000 with the wayside horn was still slightly better than the 1995 driver behavior with train horns. This research goes towards answering question number three.

After review of the accumulated experience with the use of wayside horns, FRA has determined that the use of wayside horns at crossings equipped with automatic flashing lights and gates as a replacement for train horns has merit under certain well-defined conditions. It has been clearly shown that wayside horns significantly reduce the noise footprint that a community would experience when compared to the routine sounding of train horns. At locations where wayside horns have been installed, community acceptance has been great and city officials cite that there has been no decrease in safety at the crossings. TTI's study that revisited the original Gering, NE study after six years of wayside horn use indicates that the wayside horn at that location is still as effective as the locomotive horns used during the baseline period.

The Northwestern University Center for Public Safety evaluated the effectiveness of the wayside horn at three crossings in Mundelein, Illinois. The study, entitled, *Evaluation of the Automated Wayside Horn System in Mundelein, IL* (Raub, Lucke, January 2003), utilized video monitoring of driver behavior, sound level measurements and survey instruments to: (1) Assess the impact of wayside horns on the behavior of drivers; (2) measure loudness of train horns and the wayside horns in neighborhoods; (3) obtain the opinions of locomotive engineers on perceived changes in driver behavior; and (4) obtain the opinions of residents on the differences between locomotive horns and wayside horns. The Village of Mundelein, located 35 miles north of Chicago, has 40 to 50 trains per day passing through. A baseline of driver behavior was collected for three months during which there were 10,382 gate activations. There were 367 incidents of drivers disregarding the active warning devices (flashing lights and gates) during this period. Locomotive horn use was then discontinued, and the use of the wayside horns was instituted. Data was not collected until four months had passed to allow for the novelty effect of the wayside horns to pass. Video data was then collected for three months during which there were only 97 incidents observed during the 8,683 gate activations. The study results indicated a 70 percent decrease in the number of times drivers disregarded the warning devices. Additionally, noise levels in residential and business areas located near the tracks decreased by 80 percent. As in the Ames, Iowa study, there was acceptance of the system by both the public and locomotive engineers. Ten out of the 12 locomotive engineers surveyed felt that the wayside horn was as safe, or safer, than the use of the locomotive horn. This study contributes towards answering question 2 by providing additional data on the effectiveness of wayside horns in reducing incidents of driver disregard of the warning devices. While the study does not quantitatively study question 2, it can be inferred from the data that the lack of directionality does not contribute to an increase in incidents of driver disregard of the warning devices.

The interim final rule issued today provides that wayside horns may be used in lieu of locomotive horns at crossings equipped with automatic flashing lights and gates. *See* § 222.59. Although clearly a wayside horn produces sound, because of its lower noise impact on the surrounding community, it may be installed within a quiet zone if the public authority determines that it is appropriate to do so. If used within a quiet zone, the risk at a crossing equipped with wayside horns will not be included in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index. It also should be noted that wayside horns have not yet been classified by FHWA as traffic control devices. If FHWA does classify them as traffic control devices, the wayside horn must also be approved in the Manual on Uniform Traffic Control Devices (MUTCD) or FHWA must approve experimentations pursuant to section 1A.10 of the MUTCD.

13. Horn Sound Level and Directionality

Train horns are clearly a major source of unwanted noise in communities through which active railroad lines pass. FRA included in the NPRM provisions designed to limit the dispersal of horn noise into the community where the sound does not serve its warning purpose. These provisions were a maximum limit on horn sound output and a limit to sound emanating to the side of the locomotive. FRA has a long history of working with the railroad industry to improve locomotive cab working conditions and has been sensitive in this rulemaking to balance the need to reduce noise exposure to operating crews with community noise concerns. With the release of the NPRM and accompanying Draft Environmental Impact Statement, FRA gave needed consideration to the mitigation of locomotive horn noise on communities.

The NPRM proposed limiting the horn sound emanating to the side of the locomotive to no more than the sound measured to the front, and FRA had anticipated that this might cause railroads to modify their horns to reduce some of the unwanted noise. Many commenters supported these provisions and strongly favored reducing maximum horn sound output levels from the high levels in general use. The NPRM discussed a maximum sound level from horns of 104dB(A) for crossings with active warning devices and 111dB(A) for passively signed crossings. Communities generally commented in favor of using the lower sound level in all cases. On the other hand, the NTSB commented that there is a need for high sound levels to

overcome vehicle noise and to provide adequate warning at passive crossings where significant responsibility and discretion is left to the driver. The BLE preferred a variable horn that would allow the engineer to decide when the high horn level was needed.

Because this issue presented complex questions that were not likely to be emphasized in testimony on the extensive NPRM, and because FRA sought to put detailed questions to the railroad industry regarding the horn, FRA held a Technical Conference on Locomotive Horns during the comment period. The conference was attended by railroads, the AAR, locomotive builders General Electric and General Motors, and other industry representatives. In the conference, AAR made FRA aware that the testing procedures set forth in 49 CFR 229.129 were causing a misperception regarding center mounted horns. Because the existing § 229.129 requires measurement of horns 100 feet in front of the locomotive and 4 feet above the rail, it was claimed that an acoustical shadow is cast on the measurement device by the locomotive body when center mounted horns are sounded. This acoustical shadow dissipates quickly as one moves further away or to the side of the locomotive. It was suggested that the testing procedures were giving the impression that center mounted horns were louder to the side than to the front. Conference participants complained that the proposal limiting the horn sound emanating to the side of the locomotive would force them to relocate horns onto the cab from the center of the locomotive, and would increase crew noise exposure. The use of shrouds or shields had been tried by railroads in attendance, and they did not consider them practical. The technical conference also helped FRA understand the railroads' strong commitment to remain using compressed air warning device systems and the many difficulties involved in equipping and maintaining horn systems.

After reviewing the results of the technical conference and comments on the horn provisions, FRA decided to conduct further tests to quantify the effects of horn placement and the influence of variations in available air horn models. A series of stationary tests were performed by the Volpe National Transportation Systems Center (VNTSC) at the Transportation Test Center in Pueblo, Colorado from April 10 to 12, 2001. The results of these tests showed that the shadow effect is very pronounced at the measurement location specified in existing § 229.129. When the traditional cab roof horn location was compared in these tests with the center of the locomotive body horn location which is current practice, the difference in location produced no meaningful change in community noise exposure nor in the warning signal projected beyond the immediate shadow of the locomotive body. Horns located on the locomotive nose produced less objectionable community noise but also resulted in weaker warning signals and resulted in higher noise levels in the engineer's cab. FRA learned that Transport Canada recently sponsored moving tests of locomotive horns, which showed meaningful differences in the effectiveness of the warning signal provided by horns mounted on the cab roof versus those mounted on the center of the locomotive body. The research indicated that horns mounted at the front of the locomotive on the cab roof produced a more effective warning signal. Because the results of the stationary tests and the technical conference did not justify the provision for a maximum sound limit to the side of the locomotive, it has been eliminated from this interim final rule. However, because the Canadian research indicates that horn location may be a factor in the effectiveness of the warning signal, further research is needed before any regulatory changes are made.

FRA has determined that by changing the measurement procedures in § 229.129, the effect of the shadow can be removed from horn measurement. FRA believes that this simple change, with the additional requirement of remaining below a maximum sound level, will have the effect of normalizing the sound output of all horns. The interim final rule requires that horns be measured at the familiar location, 100 feet in front of the locomotive, however the sound level meter receptor is to be mounted at 15 feet above the rail (*i.e.* out of the locomotive's ''shadow'').

FRA also continued to review and refine the signal detection theory application previously developed by the FRA Office of Research and Development and reported by the Volpe Center (Railroad Horn Systems Research, USDOT FRA/VNTSC, January 1999) using newly gathered horn measurement data. While lower sound levels would reduce community noise impact, an understanding of the relationship between horn sound level and its detection by motorists is needed to preserve the safety function of the horn. The detectability model was applied to the most critical safety condition at passive crossings where no other audible or visual warning device is present and where vehicles typically are approaching the crossing at speed. In this case the model suggests that a high likelihood of detection will occur when the horn is producing 108dB(A) at the measurement location, 100 feet in front of the locomotive and at 15 feet in height. FRA added a margin to this level to account for variability in the sound level meters and other factors and set the maximum level at 110dB(A). Although FRA employed the best available tools and knowledge to arrive at this level, additional research may, over time, suggest a different maximum level.

This interim final rule requires railroads to comply with the maximum horn level of 110dB(A) using the new measurement procedures to certify their locomotives. Compliance with the provision is required for new locomotives upon the effective date of this rule which is one year after the date of publication of this rule. Additionally, each existing locomotive shall be tested within five years of this publication date and when rebuilt as determined pursuant to 49 CFR 232.5. FRA also anticipates that whenever repairs or modifications are performed to locomotives that affect the performance of the horn system, the railroad will re-certify the locomotive horn to comply with § 229.129.

With the establishment of the maximum sound level for locomotive horns, FRA has also eliminated a plus and minus tolerance in making compliance measurements of horns. FRA anticipates that railroads will set their horns to be somewhat louder than the minimum and quieter than the maximum to account for the minor inaccuracies of the Type II sound level meters currently available. While FRA currently uses Type II sound level meters to test for compliance with part 229.129, FRA may use Type I sound level meters in the future.

Considerable effort has been expended to establish and quantify both the significant risk reduction from regular use of locomotive horns and also the level of sound that needs to be delivered to be detectable. FRA continues to study these issues and may revise these requirements as new information becomes available.

FRA also gave serious consideration to the option of requiring a two-level horn selectable by the locomotive engineer. This approach might allow a lower sound level for actively signed crossings. Historically, horns had been fitted with modulating valves that did provide some latitude for adjustment of the sound level, and communities exposed to today's automatic sequencing horns have expressed

concern at the results. However, there are a variety of practical considerations that FRA would need to consider that have not been fully developed in this proceeding before any mandatory standard could be issued (*e.g.*, the difficulties created by passively- and actively-signed crossings in close proximity to one another). FRA will continue a dialogue with railroads and communities on this issue. The rule does not foreclose this approach where it fits local conditions, and FRA will encourage railroads using locomotives that are dedicated to particular line segments to explore this option.

Steam Locomotives

FRA has elected not to address horn sound levels on steam locomotives in the rulemaking. Steam locomotives constitute a small fraction of the locomotive fleet and are mainly concentrated on tourist and scenic railroad operations with infrequent service in a largely rural area. Given the strained financial circumstances of many museum and tourist operations, and the limited noise impact the small number of steam locomotives have on local communities, FRA has not, at this time, elected to apply the maximum sound level limits to steam locomotives. It should be noted, however, that a railroad operating a steam locomotive within a quiet zone must silence its steam whistle in accordance with this rule.

14. Chicago Regional Issues

A. Introduction

The six-county Chicago Region is host to the largest rail terminal area in the Nation, and it accounts for the biggest concentration of ''whistle bans'' and associated casualties. Chicago communities and Chicago industries have grown up with and around the extensive rail complex, and the metropolitan area has benefitted greatly from an extensive commuter rail system established by the State and funded by the State and region with Federal assistance. Chicago's Union Station is also a major hub for Amtrak intercity service. The most voluminous and many of the most spirited comments we received came from Chicago Region organizations and residents who wished to maintain existing whistle bans. The train horn issue has a unique history in the region that has contributed to the need for different treatment with respect to the impact of no-whistle policies at gated crossings. For these reasons, we provide considerable detail on train horn issues in the Chicago Region.

This section of the preamble describes the regulation of horn use at the State level in Illinois, explores its implications for horn use and safety at the Chicago regional level, reports the comments from Chicago Region and State officials in this proceeding, discusses the difficulties in obtaining reliable and consistent data on where Chicago Region whistle bans were actually in effect at a given time and how FRA has attempted to resolve those difficulties and data anomalies, and explains the actions FRA has taken in the interim final rule to respond to Chicago-area concerns.

B. Legislative and Administrative Actions in Illinois

The recent history of train horn use in the Region has been reported to FRA as follows. Historically, the State of Illinois tolerated local ordinances banning whistles, and it appears railroads had observed them to a substantial extent. On July 29, 1988, Illinois Public Act 85–1144 (625 ILCS 5/18c–7402) became effective, requiring that the horn be sounded by registered rail carriers at all public highway-rail crossings.[5] Railroads complied, resulting in a substantial public outcry and court action.

The Illinois Commerce Commission (ICC) responded by excusing (exempting) all registered carriers from sounding horns at all highway-rail crossings which (i) were provided with automatic flashing light signals, or flashing light signals and gates, and (ii) had experienced less than three accidents involving a train and a vehicle within the prior 5 years.[6] In general, to qualify for being exempted, it appears that the crossing was required to have had the same type of warning system in place over the past 3 years. ICC Docket Nos. T88–0050 (orders of August 31, 1988; September 8, 1988; and October 12, 1988) and T88–0053 (orders of August 31, 1988; October 12, 1988; and January 25, 1989).

Notably, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) was not a named party in the ICC proceedings. Metra is not regulated as a registered carrier due to its status as a public benefit corporation of the State of Illinois (and accordingly is also not required to sound the horn at crossings under State law).

By contrast, Metra service operated by freight railroads as contractors to Metra, and Metra service provided over lines controlled by freight operators, has been subject to the State law and the jurisdiction of the Commission. Under Docket No. T88–0050 the ICC addressed crossings on the lines of Metra's freight partners. The Commission initially found all crossings meeting the basic requirements (active warning and fewer than 3 accidents in 5 years) to be ''reasonably and adequately protected'' with the exception of two crossings.

The Commission further found 16 crossings ''adequately protected'' despite the occurrence of (in one case) up to 5 accidents in the previous 5 years, stating that ''at least part of that finding is based on a commitment by or on behalf of the named governmental units to increase enforcement of State laws as they apply to motorists obeying automatic flashing light signals and gates. * * *'' The Commission went on to require reports referencing enforcement and awareness programs at the 16 crossings, stating in effect that it expected to see an increase in safety enforcement activity (Interim Order of August 31, 1988 at 3). Notations attached to the copy of this order provided by the Commission indicated that, in addition to the said 16 crossings, 29 crossings were initially identified for exemption under this order. In a subsequent interim order of September 8, 1988, the Chicago and Northwestern was excused from sounding the horn at the Nagle Avenue crossing, again based on a commitment for law enforcement and education.

The final order in this docket provided by the Commission was dated October 12, 1988. In this order the Commission revised its express decisional criteria as to at least the Nagle Avenue crossing, stating that certain of the accidents at that crossing ''were the result of persons deliberately ignoring the flashing lights and driving their automobiles around the gates.''[7] The commission also provided relief for two named crossings where warning systems had been recently upgraded (notwithstanding the previous accident history). The net effect of these actions appeared to have left the majority of the roughly 565 crossings on the Metra system subject to the requirement that

[5] A copy of the Illinois code provision, and copies of major Commission orders, have been placed in the docket of this proceeding. This material was provided by the Commission at FRA request.

[6] Three accidents at a single crossing within 5 years in a very large multiple of the typical accident experience among public crossings. Most individual crossings will not experience a single accident over a 10-year or greater period.

[7] This constitutes the leading cause of collisions sought to be prevented by this rulemaking, although the horn also has value to the motorist who has misunderstood the message sought to be conveyed by the traffic control device, has stalled on the crossing and needs to vacate the vehicle, or who is faced with an activation failure.

the train horn sound (or left them unaddressed from the point of view of State law due to Metra's unique self-governing status). However, that may not have been the case, as FRA has not had the opportunity to review the entire file of the proceeding; and inquiries to the Commission to clarify this point were complicated by the passage of time and turnover of rail leadership. As noted below, if that was the case it was swiftly altered by proceedings in another docket.

Highway-rail crossings off the Metra system were subject to ICC Docket No. T–88–0053. The ICC initially entered an emergency order excusing the sounding of the horn under the basic criteria previously described (August 31, 1988). A total of 113 crossings with automated warning devices were identified for continued sounding of the horn based upon the occurrence of 3 or more accidents between June 1, 1983, and June 1, 1988. On October 12, 1988, the Commission entered an interim order carrying forth this pattern, but adding exemptions for crossings that had experienced recent safety improvements. It appears that the list of not excused crossings was reduced to 50, with another 9 crossings set for exemption upon completion of planned improvements.

The final order in ICC Docket No. T88–0053 was entered on January 25, 1989. It incorporated 2 crossings on a Soo Line Metra route (previously omitted from T88–0050) which were identified as not excused. The Commission order stated that Appendix 1 listed all crossings where sounding the horn was not excused under both dockets (T88–0050 and T88–0053). Appendix 1 [8] was a list of 53 crossings said to be ''not excused,'' 9 of which were to be excused upon completion of improvements and one of which is separately marked as not excused under docket T88–0050. Of the 53 crossings not excused, 23 were in the Chicago Region. Accordingly, by early 1989 the great majority of crossings in the Region were excused, but 23 with the highest number of recent accidents remained not excused.

After its initial actions in the 1988–1989 period, the Commission evidently adjusted the terms of the exemptions over time, but the basic practice remained in place. In 1994, the Commission conducted a review of the train horn issue under Docket No. T91–0082. The Commission's order of February 24, 1994, summarized its actions to that point as follows:

> After hearings and by orders in those dockets the Commission excused registered rail carriers from whistling at crossings under the terms and conditions as set forth hereinabove; at additional crossings where a review of the type of accident at a specific crossing indicated that whistling would not have prevented the accident and at other crossings where governmental authorities agreed to increase their enforcement activities of existing statutes governing rail crossings, increase safety programs/presentations to the public regarding same, and report to the Commission at six month intervals those enforcement/presentation activities for a period of two (2) years.

The Commission went on to indicate that the present order was intended to take into account the accident history since the initial orders, as well as changes in crossing status. In reporting the findings of hearings and letters in this docket, the Commission noted that a number of Chicago-area railroads, including Norfolk Southern, Illinois Central, CSX and Chicago Northwestern (for crossings outside its suburban commuter territory) indicated that they would sound horns at all crossings even if excused. Order at 3. Though most of the communities participating in the proceeding sought exemptions for crossings within their borders, the City of Chicago stated it had no objection to use of the horn.

The Commission consolidated the previous dockets under the new number, rescinded previous orders and entered findings that made adjustments based on experience, including excusing use of the whistle at additional crossings that were ''reasonably and sufficiently protected.'' In one instance sounding the horn was excused at a crossing were ''a driver ignored operating gates and was hit and citations for violating the gates were issued to that driver. * * *'' *Id.* at 5. But the Commission indicated that carriers would be required to sound the horn at new highway-rail crossings that had not been in service for 5 years, even though equipped with automatic warning systems.

The Commission was explicit in stating that the statute ''does not give the Commission any authority to prohibit the sounding of such whistle warnings. * * *'' *Id.* at 5. The order notes that, in fact, if communities wanted carriers to sound the horn they could request that they do so despite exemptions; but there is no suggestion that local jurisdictions could require railroads to honor exemptions by running silent. Attachment 1 to this July 1994 order listed 53 crossings at which carriers were not excused under the new order (39 older crossings and 14 new crossings). There is little overlap between the crossings in this list and those specified as not excused in the commission order in the previous docket.

The Commission subsequently entered an amendatory order in Docket No. T91–0082 (dated July 20, 1994) making various adjustments to the prior order. The major effect was to cut back the list of new crossings with insufficient exposure to 4 from 14 (so that carriers were excused at another 10 crossings).

The Commission actions of 1994, which were based on accident data through June 1, 1991, apparently had the effect of excusing most of the Metra system crossings operated or dispatched by contract carriers, with the exception of 5 Soo Line crossings. However, 14 additional Chicago Region crossings without commuter trains were not excused.

In its 1994 orders, the Commission was silent with respect to the wisdom of continuing to excuse crossings with fewer than 3 accidents in a specified 5-year window in the past. The movement in the pattern of exemptions from 1988 to 1994 was significant. If the Commission considered the possibility that (i) sounding the train horns may have reduced the risk of collision in the period 1989–1991 for crossings that had previously experienced 3 or more collisions within the overlapping previous period and (ii) excusing compliance with the train horn at those crossings might drive the risk back up, the record available to FRA is silent with respect to such consideration.

C. Actual Practice Sounding Train Horns in the Chicago Region

It is clear that, particularly prior to 1994, ICC orders excusing the use of the locomotive horn contained significant exceptions, and certain exceptions (applicable to largely different crossings) apparently continue to date. While the ongoing rationale for Commission decisions is apparently not consonant with the principles later applied in Federal legislation leading to this rulemaking, Commission orders without question have tended to withhold relief from use of the horn for a significant number of crossings that are very high risk. In some cases, communities may have been stimulated to engage in enforcement or education efforts in order to support exemptions.

It is also apparent that freight railroads have taken disparate points of view with respect to exemptions, with

[8] The attachment FRA received from the Commission did not bear the docket caption, but the Manager of the Railroad Safety Section of the Commission confirmed that FRA had received the correct item and that the caption had been obscured during copying.

some electing to blow the horn at all crossings and others taking a more selective approach.

Much of the highway-rail crossing safety exposure in the Chicago Region is found on the Metro commuter rail network, which includes the following:

- Lines over which Metra has operated service directly and subject to its own rules throughout the period 1988 to date (the Rock Island District, South Shore Line, Southwest Service, and the Electric District);
- Lines on which Metra operates in effect as a tenant, with the freight railroad imposing operating rules and providing dispatching (Milwaukee District West and North lines (Soo Line) and the Heritage Corridor (CN));
- New service established using Metra crews over Wisconsin Central in 1996 (North Central Service); and
- Freight lines over which the freight railroads provide Metra service as contract operators (UP North Line, UP Northwest Line, Wisconsin Central North Central Service, and BNSF Aurora line service).

Most of these lines carry significant freight volumes, as well as significant numbers of daily commuter trains.

Throughout the period Metra has enjoyed discretion with respect to whether to sound the locomotive horn at crossings where it provides service directly, and Metra's host railroads and contract freight operators have also enjoyed significant latitude as a result of the ICC exemption policy. Metra testimony and filings in this docket indicate that 69 percent of the 565 public grade crossings on the Metra route system were no-horn crossings as of spring 2000. It follows that Metra trains sounded horns at about 175 crossings and did not sound the horn at about 390 crossings during that time period, but the picture may have been somewhat different during earlier periods. FRA concludes that Metra and its contractor operators have exercised discretion in whether to sound horns, even where exemptions from the State mandate existed, based upon safety concerns and community quiet concerns. Given FRA's knowledge of safety programs, FRA believes that Metra has likely tended to emphasize safety where risk is known to be relatively high based on factors such as crossing characteristics (angle of intersection, complexity of the roadway geometry including nearby roadway intersections, history of accidents, crew reports of near hits, and other factors). According to the ICC, Metra has also utilized some time-of-day partial bans to address infrequent train movements during early morning hours. While freight railroads in the Chicago Region have apparently run silent as commuter operators over crossings where horn sounding was excused, they have been much more likely to use the horn when operating freight trains for their own accounts.

D. Current Chicago Region Whistle Ban Status

Quite obviously, the fact that the ICC excused use of the horn does not mean that trains are running silent over the crossing. The current total number of crossings in no-whistle status in the Chicago Region is apparently significantly smaller than the original 846 identified by the AAR and others in the early 1990's. As of August 3, 2000, the ICC was estimating only 23 no-whistle freight-only crossings, all on the Indiana Harbor Belt, and 320 crossings used by passenger and freight trains (Metra system), for a total of 343 no-whistle crossings. Of this number, 13 were affected by bans only during part of the day (*e.g.*, nighttime or off-peak), and the remainder were 24-hour bans.

Information provided by the AAR on October 24, 2000 indicated a total of 28 no-whistle freight-only crossings in the Chicago Region and 227 no-whistle crossings on the Metra route system for a total of 255. The AAR noted that ''none of these railroads operates at public crossings in Chicago without sounding the whistle unless the crossings are equipped with gates or trains operate at speeds under 10 m.p.h.'' At approximately the same time Metra informed FRA that 130 crossings on their property were no-whistle crossings. Between the year 2000 and 2002 some of these crossings were reported in the inventory as being closed or no longer public. When combined and checked against year 2002 inventory records some 304 Chicago Region crossings were considered no-whistle based upon AAR and Metra sources.

In November of 2002, the ICC provided an updated listing of crossings in the State of Illinois indicating current whistle status (based on actual practice). It showed 278 no-whistle crossings in the Chicago Region and, of those, 226 corresponded with the 304 provided by AAR and Metra. FRA also learned of 29 additional quiet crossings in some other suburban Chicago communities for a total of 385.

To the extent that the ICC and AAR may not have queried all railroads, particularly smaller short line and regional railroads, a few crossings may have been omitted from these counts. The AAR and ICC filings are also notable in omitting lines directly operated by Metra, which is an AAR member. However, it is clear from the AAR's filing, as well as representations made by railroads to the Commission in 1994 and recent lists provided by the Commission, that the horn has been sounded at the vast preponderance of freight-only crossings in the Chicago Region since at least the 1994 time period.

The following table summarizes the available data for the mid-2000 period, including both partial and 24-hour bans for the Chicago Region:

	Total Crossings in Region (2002)	FRA Updated Nationwide Study (Jan. 2002)	No-whistle crossings per 8/23/2000 CATS estimates	No-whistle crossings per 10/24/2000 AAR letter	No-whistle crossings per ICC 11/19/2002	No-whistle crossings as of 2002 (FRA reconciliation)
Commuter	.....	.....	320	227	.....	347
Other	.....	.....	23	28	.....	38
Total	1,671*	846**	343	255	278	385

*Current total from FRA inventory with adjustments for known closures.
**Based on early AAR survey and crossings identified during outreach largely prior to the NPRM.

FRA's reconciliation in effect adds no-whistle crossings on Metra's home lines to the AAR estimates and the information from the ICC. AAR had included the no-whistle crossings on Union Pacific, BNSF, and Wisconsin Central property, but not on Metra owned and operated routes. Again, it is possible that these counts omit a few no-whistle crossings, possibly those on railroads not surveyed by the parties.

E. Community Reaction to the Proposed Rule

Testimony from public officials representing the Chicago Region was reasonably consistent in content. The major Chicago Region groups argued that the collision rate at grade crossings in the Chicago Region is lower than the nation—even with whistle bans. They argued that FRA's Inventory data were outdated, that the rule is too costly, and that it would take much longer to implement than FRA had proposed to allow. Chicago commenters also postulated that the Chicago area will be the most impacted by the rule. The general conclusion suggested by most of the commenters was that the Chicago Region (or Illinois as a whole) should be excluded from the final rule and left to implement its own programs, which are said to be better suited to local conditions. This testimony was supported by State-level officials.

FRA is familiar with the efforts of the Illinois Commerce Commission, the Illinois Department of Transportation, Metra, freight railroads, and many counties and cities to improve safety at highway-rail crossings in Illinois, and specifically in the Chicago Region. These efforts are presently well led and well coordinated, and the State contributes significant resources. Nevertheless, in the year prior to the testimony on the proposed rule, Illinois led the Nation in fatalities at highway-rail crossings. The State regularly places second or third in that category, even though collisions and casualties declined over the decade of the 1990s (as they did in the Nation).

This record is driven to a significant extent by the very heavy exposure in the Chicago Region, where every weekday over a thousand trains compete with millions of motor vehicles at almost 2,000 highway-rail crossings. Collisions on major Chicago-area lines are more likely to result in serious injuries or fatalities because of relatively high train speeds associated with commuter service. FRA calls attention to this issue not to be critical in any way, but rather to note the importance of sustained effort by all responsible parties to meet this continuing safety challenge.

FRA thoroughly reviewed all studies, testimony and comments submitted by Chicago-area commenters, including the Speaker of the House of Representatives, other Members of Congress, the Chicago Area Transportation Study (CATS), Northwest Municipal Council (NWMC), Dupage Mayors and Managers, and the City of Chicago, Department of Transportation, among others. FRA also took official notice of testimony before the Subcommittee on Ground Transportation of the Committee on Transportation and Infrastructure, U.S. House of Representatives, on July 18, 2000 (''Implementation of the Federal Railroad Administration Grade-Crossing Whistle Ban Law,'' No. 106–101), which focused heavily on the Chicago Region.

FRA endeavored to fairly evaluate the claim of special circumstances, as well as to take the specific points into account in relation to the National issue posed in this proceeding. What follows is a discussion of FRA's findings, comparing FRA's data and methodologies with those in submissions by Chicago-area groups. We also discuss further the statistical analysis reported above with respect to its significance for the final rule. We conclude that many comments from the Chicago Region have valid application when tempered by other available information, and we call attention to aspects of this rule that reduce the impact of the rule at no-whistle gated crossings in the region. As described above, FRA also developed a risk-based method for excepting many communities from the train horn requirement. Moreover, this interim final rule provides significantly more time for implementation than did the NPRM.

F. Methodology/Inventory Data

As noted above, Chicago Region commenters generally viewed the grade crossing safety record in the region as good. Many commenters suggested that the train horn could not be an effective warning device in the Chicago setting because of the number of train movements (motorists would become inured to the warning). Thus, it was felt that there was no difference in safety performance between crossings where the horn is sounded and those where it is not sounded. (By contrast, the ICC implicitly recognized the usefulness of the train horn but argued more widespread use of the train horn would not be accepted by the public and was not necessary given existing administrative standards.) FRA has responded to the comments by thoroughly reviewing the underlying data as well as conclusions derived from the data in the NPRM.

To understand the controversy over Chicago data it is necessary to recall several points regarding the Chicago Region at the outset. First, virtually all of the crossings identified during public contacts as of concern to Chicago residents with respect to termination of existing horn exemptions are equipped with flashing lights and gates (''gated crossings''). Second, as discussed above, the ICC required use of the train horn at some of most hazardous crossings during at least portions of the FRA study period; and, even when the Commission excused use of the train horn, Metra and freight railroads often elected to use the horn notwithstanding public opposition, if any.

It is also necessary to understand some basic information regarding the data that FRA has available to work with. Accident/incident data used in this rulemaking are reported to FRA by the railroads under regulations having the force and effect of Federal law (49 CFR Part 225). The data are available on FRA's public Web site at the individual crossing level, so local officials have the opportunity to call any problems to the agency's attention. In general, FRA has every reason to believe that these data are accurate, with the exception that a recently-added field to identify the presence of a whistle ban appears to be eliciting information of questionable quality (and FRA has not relied on that field in this proceeding).

The characteristics of crossings (number of tracks, trains, motor vehicle traffic, etc.) are determined by reference to the Department of Transportation's national Inventory of highway-rail crossings, which is maintained by FRA on behalf of all users. This is a voluntary data collection effort, and the degree of cooperation in maintaining its currency varies from year to year and among contributors. Substantially all highway-rail crossings have been assigned Inventory numbers. Both the State departments of transportation (for public crossings) and the railroads (for public and private crossings) are requested to contribute updates to the Inventory whenever circumstances change. Since State departments of transportation receive Federal-aid highway funds for crossing safety and other highway improvements, and since under the ''section 130'' program States are required to maintain a ranking of crossings by degree of hazard in order to plan allocation of funds reserved for crossing safety purposes, it is reasonable to ask the States to share data needed to analyze crossing risk at the National level. It is also reasonable to ask railroads to provide these data, since they have an interest in avoiding collisions at crossings, as well as liability associated with such collisions. FRA has actively promoted participation in maintaining the Inventory for the benefit of all users.[9]

[9] In 1999, and again in 2002, the Department of Transportation transmitted to the Congress draft legislation that would make submission of current data to the Inventory mandatory for both States and railroads.

Some States, and some railroads, are more aggressive than others in providing updated data for the Inventory. When FRA examined the Inventory in the summer of the year 2000, FRA found that the average age of the most recent Inventory updates for the State of Illinois was nine years. Except as noted below, FRA's attempts to elicit more recent information from State authorities during the pendency of this proceeding have been largely unsuccessful.

Until recently, the Inventory did not contain a field for the presence of a whistle ban, and FRA has not found notations in the current inventory to be sufficiently complete or reliable. The issue of which crossings have been subject to bans or exemptions during particular periods of time has been resolved through two means. First, in preparing the National Study relied upon in the NPRM, FRA relied to a significant extent upon a survey conducted by the AAR (survey information received in 1992) and on information received during outreach in anticipation of this rulemaking.

Second, FRA has asked commenters in this proceeding to provide the best information that they have available, including a direct request to AAR to update its earlier survey of crossings (response received in October of 2000).

Third, FRA has directly approached public authorities in the Chicago Region asking for information. Finally, in the case of some crossings for which the status was clearly questionable (both as to whistle ban status and other data elements), FRA has reviewed railroad documents and conducted site visits.

Given the discrepancies pointed out in the NPRM, FRA has sought to obtain updated Inventory and ban information from the City of Chicago, but that had not occurred more than two years after the requests were made and as this interim final rule was being completed. (Attempting to resolve this data problem has caused significant delay in this rulemaking, as FRA has endeavored to use the best available and most credible information in preparing this interim final rule. However, given the policy choices FRA has made in this interim final rule, a comprehensive resolution of the data problem has not proven necessary.)

Commenters on the NPRM questioned FRA's data, which FRA had characterized as finding a significant effect from silencing the train horn at gated crossings in the Chicago Region. Some of this criticism was direct (challenging the relevant FRA data on gated crossings), and other criticism was indirect (challenging data on passively signed and flashers-only crossings that FRA had published to complete the public record but had noted might be unreliable).

Most Chicago-area commenters were convinced that the whistle ban grade crossing collision rate in Chicago is lower than the rate throughout the rest of the nation, and many contended that the train horn is wholly ineffective. In short, they doubted the conclusion stated in FRA's *Updated Analysis of Train Whistle Bans* (January 2000) that, on average, gated whistle ban crossings in the Chicago Region experienced 58 percent more collisions than gated crossings with similar predicted risk of a collision at which train horns sounded. Two studies by associations of local governments, discussed below, seemed to indicate different results.

As noted above in the discussion of the Westat reports, FRA initially responded to the comments and analysis by contracting with that statistical firm to regenerate the national study, using the best available information for the study period 1992–1996, to maintain comparability with the earlier work and to avoid what might be temporary effects from the extensive publicity associated with this rulemaking. FRA provided the best available information regarding the status of crossings in Chicago during the study period, along with other necessary data. Westat reviewed the prior FRA method (which it found useful and appropriate), made some improvements in the method, and computed national results which are reported above. With respect to gated crossings in the Chicago Region, Westat found as follows:

> For grade crossings with gates, the estimated effect of a whistle ban depended on the comparison group in the Chicago area. * * * Using the Continental U.S., Florida and Chicago area excluded, as the comparison group, grade crossings with gates without a ban had a significantly lower accident rate than grade crossings with a ban, whereas using the Chicago area grade crossings with no ban for comparison, there was no statistically significant effect associated with a ban.

Zador, Paul L. at 6 (April 1, 2002).

Stated differently, during the study period Chicago Region gated whistle ban crossings experienced an average of 34 percent more accidents than similar crossings in the Nation where the train horn was sounded. The results were statistically significant but as noted above a further statistical test indicated poor model fit.

Accordingly, as FRA endeavored to bring together the various sources of information and analysis in preparation of this interim final rule, FRA made further inquiry into the distribution of ''no whistle crossings'' with the conclusions recited above. FRA then provided the corrected set to Westat for further analysis. Recognizing that the current no-whistle status could not be assumed to be valid for the earlier period, during which substantial ICC and railroad decision making had no doubt resulted in major changes in status, FRA also provided a more recent accident data set (1997–2001).

As noted above, the result was that, for gated crossings (by far the largest component of the Chicago Region issue), it was determined that no-whistle policies resulted in an increase of 17.3 percent in accidents. This value was not supported by a very high level of statistical confidence. Accordingly, FRA was left with three options:

1. Elect to determine that the Chicago analysis was inconclusive, that the statute requires FRA to find that the train horn has been fully compensated for, and that the logical alternative was to employ national averages (with or without inclusion of the Chicago data).

2. Take note of the negative impact results yielded by the comparison of Chicago train horn and Chicago no-whistle crossings, and determine the impact of no-whistle policies in the Chicago Region to be zero, at least for pre-rule no-whistle crossings; or

3. Note the Westat finding that the Chicago crossings are in fact different in their characteristics and accept the most recent Westat estimate (17.3 percent) of the effect of whistle bans on accident rates at gated Chicago Region crossings, either for all quiet zones, or for Pre-Rule Quiet Zones only.

The first option of using national averages for the entire Nation, including Chicago, would have been employed by FRA if the Chicago Regional data were not available or their use inappropriate. FRA could have rationally decided that the limited significance of the Chicago Region statistical conclusions did not require reliance on those conclusions. This would have resulted in a fully functional and appropriate interim final rule consistent with the Act; a rule FRA would not have hesitated issuing. However acceptable this option was, it would have necessitated according little weight to a sizable body of testimony from the Chicago Region together with statistical analysis and qualitative knowledge of the Chicago Region's unique characteristics (discussed further below).

The second option would require FRA to ignore the reality of discretionary selection and the strong evidence based on other national data (memorialized in the statute giving rise to this rulemaking

as well as the laws of most States, including Illinois), that the train horn can make a positive contribution at the margin. FRA believes this option would not have been a rational choice.

FRA has chosen the third option, and has further determined that the lower estimate of ban impacts should be applied only to crossings in Pre-Rule Quiet Zones. The need to determine the impact of no-whistle policies on accident rates derives from the statutory definition of supplementary safety measures. The statute permits certain crossings to be excepted from the requirement to sound the train horn, including crossings ''for which, in the judgment of the Secretary, supplementary safety measures fully compensate for the absence of the warning provided by the locomotive horn [emphasis supplied].'' As delegate of the Secretary, FRA makes this judgment in light of the following considerations:

- Utilizing an estimate of approximately 17 percent, despite the limited statistical significance of the estimate, takes advantage of the best and most current analysis available and fully recognizes the conclusion of the Westat report that the ''ban effect for gated crossings was significantly different in the Chicago area. * * *''
- Not only was the input data set of no-whistle crossings for the final Westat study much improved from the prior work, but the time period of the study included the period when several Chicago-area jurisdictions were making special efforts to address crossing risk, particularly where no-whistle policies were in place. Reliance on the lower estimate has the practical effect of rewarding effort already expended, taking into account scores of comments by Chicago area officials and residents as well as the ''interests'' of communities wishing to retain existing no-whistle policies.
- The recent study takes into consideration other variables that may have closed the risk gap in the region, particularly completion of the retrofit of auxiliary alerting lights, as well as special efforts made in the region (*e.g.*, Metra's election to utilize both low-mounted ''ditch lights'' and oscillating lights, rather than just ditch lights).
- Use of the lower estimate is fully consistent with what FRA understands regarding the application of no-whistle policies, *i.e.*,
- Discretionary selection has almost certainly occurred in the region. Under current State law (which will be preempted by this interim final rule), railroads have the latitude to sound the horn or refrain from sounding the horn at individual crossings excepted from train horn sounding.
- Following their interest in safety and limitation of liability, overall railroads likely have elected to use the train horn where risk is higher or have exacted responsive action from communities to compensate for use of the train horn.
- The most extensive use of no-whistle policies has been made on commuter lines where many trains are scheduled, train counts are high, and motorists are thus more likely to expect a train. Although the absolute effect of silencing the horn at these crossings is still a matter of substantial concern given the high exposure at these crossings, the proportional effect of silencing the train horn is lower (again, because motorists are conditioned to believe the train will come, most trains are very conspicuous with two forms of alerting lights, and—on lines where commuter trains are predominant—motorist tolerance of delays is reduced by the expectation that the train will clear the crossing rapidly).

FRA believes that the combination of these various factors provides a fully rational basis for selecting this option over the equally rational first option and the unsupportable second option, described above. FRA notes that the application of this lower effectiveness rate for the train horn to pre-rule, no-whistle gated Chicago Region crossings does not mean that the acceptable risk at those crossings will be measured differently. To the contrary, those crossings will be subject to the same Nationwide Significant Risk Threshold as all other pre-rule, no-whistle crossings. The unique effectiveness rate, which applies only at Chicago Region gated crossings, determines only the amount of reduction that may be required to meet this national risk standard. FRA believes that a reduced estimate of ban-induced accidents at grade crossings is appropriate for existing (pre-rule) no-whistle crossings. However, a reduced estimate would not be appropriate for current crossings in the Chicago Region where the train horn presently sounds, should those communities desire New Quiet Zones. Even on the commuter rail network, the risk characteristics of those crossings may be substantially different (*e.g.*, more difficult geometry or sight distances, less local commitment to enforcement, etc.) Indeed, the comparisons between train horn and no-whistle crossings in the region confirm that a reduced estimate at the 17 percent level would not be appropriate for those crossings. Nor can FRA say that there is an intermediate level which is well supported empirically or judgmentally. Accordingly, FRA will apply the national estimate of ban impacts to New Quiet Zones in the Chicago Region.

FRA recognizes the potential down side of qualifying Pre-Rule Quiet Zones using a lower estimate of ban effects. It is possible that some or all of the difference in performance has to do with factors that are beyond the control of this interim final rule. For instance, the extensive coverage of this rulemaking by the Chicago media will end as the rule is implemented, and that may result in future motorist behavior that is less favorable than in the past. Changes in local risk to which railroads might previously have reacted by resuming use of the train horn may become a source of concern, given the mandate of the rule to run silent through Pre-Rule Quiet Zones that have been qualified under the new procedures. Accordingly, FRA will monitor results in the region and consider further action as indicated.

Note on Intra-Regional Comparisons

Commenters in the proceeding also asked FRA to compare Chicago ban crossings to Chicago crossings where the train horn sounds, and FRA charged Westat with including that element in its analysis. As noted above, Westat reported that no statistically significant effect from the train horn was found when Chicago Region gated crossings, where the train horn sounds, are compared with the Chicago Region whistle ban crossings. This is neither surprising nor in conflict with the hypothesis that the train horn is useful. No accident prediction formula can capture all factors present at individual crossings, and in Illinois railroads have the latitude under law to sound the horn at exempt crossings. It is logical to expect that railroads would as a matter of discretion elect to sound the horn at crossings with very high known accident potential (given factors such as roadway geometry, accident history and observed motorist behavior), at least in those cases where community objections to noise are not sufficiently strenuous to convince them otherwise. Further, in those cases where the railroads did not make this election and the accident counts rose significantly, the ICC could eventually be expected to intervene. Neither the railroads nor the ICC could be expected to go too far in the direction of discretionary use of the train horn, however, given vocal community objections.

The result has been, FRA believes, that the train horn is sounded as a matter of discretion at many (but by no means all) of the very riskiest crossings

in the region that may technically have been considered whistle ban crossings due to an exemption from the State mandate to use the horn; and, even though the risk is reduced by the train horn, these crossings nevertheless remain among the riskiest in the region.[10] This discretionary selection has indeed had the effect of abating significant risk in the region, but it follows from this discussion that the resulting statistical pattern *within* the region does not in any way call into question the potential for risk reduction at the remaining crossings where the horn is silenced. To the contrary, FRA anticipates that requiring that the train horn be sounded at remaining whistle ban crossings in Chicago would reduce accident risk at those crossings, on average, about 15 percent.[11]

Studies Provided by Commenters

In response to the NPRM, CATS (Hafeez and Laffey) performed a separate study of the effects of whistle bans in the Chicago area and concluded that whistle bans have no effect on the collision frequency in the Chicago area. Following receipt of the CATS study, FRA asked Westat to review that report and provide an evaluation.

The CATS study used a statistical technique called Analysis of Variance (ANOVA) to determine if grade crossings that had a whistle ban experienced a higher collision rate in comparison to grade crossings where train horns are routinely sounded. This method tested the statistical significance of the effect of a whistle ban on collision frequency using the interaction between device type and whistle ban. Westat found that, besides warning device class, this method failed to account for any of the other factors that are known to affect collision rates, such as daily train and traffic frequencies, train speed, number of highway lanes, and number of tracks. Furthermore, grade crossing collisions are rare event that are not normally distributed, but rather follow a Poisson distribution. The CATS study applied a technique designed for use with normally distributed data that does not work well for data that are not normally distributed. The result of applying this model was residuals that were not normally distributed. According to Westat, the omissions of factors known to affect collision rates coupled with an improper technique rendered the model poor for the purpose of analyzing the effect of whistle bans on collision rates.

Disagreements about methods notwithstanding, Hafeez and Laffey come to essentially the same conclusion as the Westat analysis—*i.e.*, Chicago Region no-whistle crossings may be safer on average than Chicago Region train horn crossings, at least when only certain factors are controlled in the analysis. As we have explained above, this is not a surprising outcome when discretionary selection is considered.

Further, given the analytical methods used and the small data sets available for analysis, it would be as easy for confounding variables to mask any differences as it is alleged by commenters to be for such variables to generate specious differences. Consider, for instance, that most of the Chicago-area no-whistle crossings are on the commuter rail network, while most of the train horn crossings are on lines used exclusively or almost exclusively for freight. (Hafeez and Laffey also used the same, inflated data set of no-whistle crossings that FRA had used in its earlier analysis, which was the best available at the time. It contained large numbers of freight-only crossings where the train horn was likely sounded during much of the period.)

The Northwest Municipal Conference (NWMC) also filed comments in this docket and attempted a statistical re-analysis of accident risk within its territory using the FRA method as reported in the NPRM and Nationwide studies. This analysis also compared local area train horn crossings with exempt crossings where railroads have elected to run silent. It concluded that train horn crossings are no safer than no-whistle crossings, whether one compares all crossings or just gated crossings. FRA determined that NWMC's analysis did not follow the FRA procedure appropriately, particularly as to stratification of the sample. Nevertheless, as noted above, FRA has determined that comparisons, between Chicago train horn crossings and no-whistle crossings, cannot properly evaluate train horn usefulness within the context of the Chicago Region, since discretionary selection has likely shifted a disproportionate number of the most hazardous exempt crossings into the train horn category and other confounding variables may apply.

The NWMC analysis concludes the whistle ban is likely a spurious variable in the FRA analysis. It argues the factors used in the APF, such as train and automobile traffic, account for current accident levels rather than the whistle ban because the APF accounts for almost 80 percent of the variation in accidents. FRA's current approach adjusts for these effects. It is based on a Poisson regression that includes the factors used in the APF along with the whistle ban.

Implications of the Various Studies

This interim final rule endeavors to ensure that, to the extent practicable, these decisions are made based on safety rather than economic or political influence, with the important additional difference that communities have the option of insisting that the horn be silenced where supplementary or alternative safety measures are put in place (or where no ''significant risk'' is determined for the corridor).

Again, FRA is keenly aware of the hazard that a spurious variable can confound statistical analysis and designed the stratified/matched pair method used in the national studies specifically in an effort to avoid that effect. FRA has also performed longitudinal studies, as reflected in the Florida report and case studies embodied in the Nationwide report. In every case where FRA has had sufficient valid data points to draw meaningful conclusions, the effect of the train horn has been confirmed, lending empirical confirmation of the following: the judgment implicit in ICC exemption management (that restoring use of the train horn can lower risk); human factors research; State laws requiring use of the horn; the opinions of railroad professionals who are exposed to motorist behavior on a daily basis; and the assumptions Congress made in enacting the law that required FRA to issue this rule.

In any event, FRA strongly agrees with the NWMC comment that it is best to utilize a method that is responsive to demonstrable regional differences, where possible; and the interim final rule follows this pattern. The result is a significant reduction in effort that would need to be expended to institute quiet zones in the Chicago Region.

In conclusion, the comments related to safety at gated crossings, taken together with subsequent statistical analysis, support reconciliation of FRA safety concerns with the strenuously

[10] Many of these very high risk train horn crossings would also benefit substantially from safety improvements such as four-quadrant gates, traffic channelization, or photo enforcement; and public investments would be recovered through reduced loss of life and injuries avoided. FRA will continue to encourage use of these techniques wherever they may be useful. While that is not the subject of this proceeding, the pendency of this proceeding has the benefit of calling attention to these possibilities for risk reduction that cannot be achieved using ''standard'' crossing safety measures.

[11] A 17.3 percent increase to a base amount yields a value of 117.3 percent (risk after implementation of a no-whistle policy). Restoring use of the horn would reduce the risk to a level 100 percent of the prior level. Seventeen and three-tenths is 14.7 percent of 117, so restoring the inflated value to the base amount is a 15 percent reduction to the no-whistle state, after rounding.

argued representations of the State and local jurisdictions that they are actively promoting safety at highway-rail crossings. The bottom line is that Chicago-area railroads and the ICC have acted to employ the train horn at many of the most hazardous crossings, but it is very probable (in FRA's judgment) that excess risk continues to be unabated at many no-whistle crossings where the train horn is silenced. This interim final rule offers the region automatic approval of the demonstrably safest quiet zones and, for quiet zones exhibiting higher degrees of risk, a mechanism for implementing supplementary and alternative safety measures, over a longer period of time and at lower cost than originally proposed, with the result that existing quiet can be preserved and New Quiet Zones can be established with a reasonable degree of confidence.

G. ''Chicago Anomaly''

In the NPRM at page 2234, FRA reported results of the *Updated Analysis of Train Whistle Bans,* January 2000, which examined data for the five year period from 1992 through 1996 (Updated Nationwide Study). The most widely cited passage in that analysis reads as follows:

> The updated analysis also indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. This finding made it clear that the train horn was highly effective in deterring collisions at non-gated crossings equipped only with flashing lights. The only exception to this finding was in the Chicago area where collisions were 16 percent less frequent. This is a puzzling anomaly. One possible explanation for this result is that more than 200 crossings (approximately one third of the crossings in Chicago) still included in the DOT/AAR National Inventory have in all likelihood been closed. They would continue to be included in the Inventory until reported closed by State or railroad officials. (At this time submission of grade crossing Inventory data to FRA is voluntary on the part of States and railroads.) FRA believes this could contribute to the low collision count for Chicago area crossings without gates. Collisions cannot occur at crossings that have been closed. The retention of closed crossings in the Inventory would, therefore, have the effect of incorrectly reducing the calculated collision rate for the Chicago area crossings.

The Nationwide study showed a similar unexpected result for passively signed crossings in the Chicago Region.

Over three years after this analysis was published, FRA still has not received a full update of the Inventory for the City of Chicago, despite frequent requests. FRA did, however, test its thesis that the data set is not suitable for analysis by checking crossing status directly with railroads and through site visits to a representative sample of crossings. The result is that, based on current conditions many of the crossings identified in the Inventory have long since been closed (over half of the passive crossings and almost a third of flashers-only crossings) or the type of warning device has changed. It is logical to assume that the remaining crossings have experienced other changes since the last inventory records that may have further confounded the analysis.

More importantly, when post-NPRM filings from the ICC, AAR and Metra were examined and compared with declarations in the ICC proceeding during the period 1988–1994, it became evident that there likely were very few passively-signed and flashers-only crossings that were in no-whistle status during the most of the study period 1992–1996. Certainly there are very few today—too few to yield meaningful comparative data towards a regional estimate.

As explained above, FRA finds no reason to apply estimates other than the national averages to these categories of crossings. Since the crossings equipped with flashing lights only or passive devices are generally low-train-speed and single-track crossings, FRA knows of no supportable reason why there should be a special effect in the Chicago Region at those crossings. Indeed, since the ICC did not excuse use of the train horn at passive crossings, it is likely that no bans have been observed at those crossings during the period or—as suggested by the AAR in its October 2000 filing—that this has occurred only at crossings where train speeds were less than 10 mph, which is typical only within yards and on track approaching industries. Accordingly, National averages are appropriate for use under this interim final rule for both passive crossings and flashers-only crossings.

H. Safety Trend Lines

Chicago-area and other Illinois respondents asked FRA to consider the improving safety record at grade crossings before imposing a train horn requirement. CATS noted that collisions at crossings in Northeast Illinois had declined 59 percent since 1988. FRA recognizes that the safety record at Chicago Region crossings has improved markedly during the last several decades, and this is also true for the State of Illinois and for the Nation as a whole. These gains have resulted from expenditure of Federal and State funds on improved warning systems, local and National public awareness efforts sponsored by a variety of parties (including U.S. DOT and the States through Operation Lifesaver, Inc.), improved engineering of highway-rail crossing and related traffic control systems, installation of alerting lights on locomotives and cab cars, general efforts devoted to improving highway safety (*e.g.*, seat belt campaigns, impaired driver campaigns, etc.), closure of redundant crossings, and targeted law enforcement in some local jurisdictions supported by a 1995 Illinois State law imposing a high monetary penalty for disregarding warning systems at crossings. It is also possible that freight railroads operating in Illinois have been more aggressive in sounding the horn since the publication of FRA's Florida and National studies (as they have been in other jurisdictions where permitted to do so by repeal of bans or as a result of favorable Federal court rulings).

As noted above, FRA has further updated its safety analysis to capture developments in the period 1997–2001. The result is a much lower estimate for current ban-induced risk at Chicago gated crossings—the great majority of no-whistle crossings in the regions.

I. Accident-Free and Low Risk Jurisdictions

Chicago-area commenters, including the Northwest Municipal Conference, were prominent among those arguing that extended periods of safe outcomes at local crossings should be recognized. As explained elsewhere in this preamble, the interim final rule provides a conditional exclusion for existing whistle bans where all crossings in the jurisdiction have been collision-free for the past 5 years, provided the projected risk is below the product of two times the Nationwide Significant Risk Threshold. The interim final rule employs a risk-based approach that credits good safety results. In fact, some existing whistle ban jurisdictions may be able to avoid additional costs indefinitely provided their safety record stays within the required parameters outlined in the interim final rule.

J. Impracticability

Many Chicago-area commenters were particularly strong in making the point that several of the identified supplementary and alternative safety measures would not work in their local communities. Although many of these comments are discussed in other portions of this preamble, it is appropriate to call attention to three safety alternatives to the horn which were cited as impractical due to local

conditions in the Chicago area or in Illinois generally.

First, FRA was told that four-quadrant gate systems were not permitted by the Illinois Commerce Commission. Since that testimony, the MUTCD, which is issued by the Federal Highway Administration and supported by a national committee of traffic control experts, has been amended to specify criteria for four-quadrant gates as a standard warning system at highway-rail crossings. This action signals the acceptance of this safety system by professional traffic safety experts. Further, the Illinois Department of Transportation has funded installation of a large number of four-quadrant gates at crossings on the designated high-speed rail corridor between Chicago and St. Louis via Springfield, with ICC participation. The ICC has also stepped forward to demonstrate a low-cost vehicle presence detection system for use with four-quadrant gates. FRA believes that the Illinois Commerce Commission will continue to respond appropriately to identified needs for four-quadrant gate systems.

Second, FRA was told that photo enforcement is not authorized under Illinois law at highway-rail crossings. Photo enforcement for red-light running (and to a lesser extent for excessive speed) is becoming standard practice in a growing number of jurisdictions nationwide. After some initial difficulties related to program design and judicial acceptance, a photo enforcement project in the Chicago Region is continuing with the promise of positive results. There are currently four crossings in the Chicago Region that are equipped with photo enforcement (Downers Grove, Naperville, Wood Dale and Winfield each have one crossing so equipped). The Naperville installation has been in effect since July 2000. There has been an 87 percent reduction in violations of the warning devices at the crossings, and there has been a 98.5 percent conviction rate of the citations issued. The Wood Dale installation, which has been in service since December 1999, showed a 47 percent reduction in violations as reported in September 2000. Both the Downers Grove and Winfield systems are relatively recent but the initial reports are favorable. The timetable set forth in this rule allows ample time for results of the current demonstration to be communicated to the legislature and for the legislature to authorize photo enforcement.

Third, FRA heard from many jurisdictions in the Chicago Region that median barriers would not work in their settings because of major roadways that run parallel to rail lines, either on one side or on both sides of the rail line. FRA has noted these circumstances in visits to the communities, and FRA concurs that median barriers as specified for supplementary safety measures in the NPRM will not work at many locations. FRA has responded by making the requirements for channelization more explicitly flexible in the appendix language describing alternative safety measures. FRA has made it clear, for instance, that channelization on one side of the rail line—or for a shorter distance than the 60–100 feet nominally desired—could qualify for a risk reduction credit. FRA has also recognized that at many locations channelization is not feasible, and this has been taken into consideration as the costs and benefits of the interim final rule have been assessed.

Finally, FRA has taken seriously the concerns expressed with respect to the cost associated with verifying risk reduction following implementation of public education and enforcement programs. FRA has joined forces with the ICC and local communities to implement the Public Education and Enforcement Research Study (PEERS) program. This education and outreach effort will be evaluated for effectiveness at the community level and, if successful, could have potential for application across the region. Although FRA cannot state specifically how this approach might be integrated into this rule until results are known, it does offer an additional possibility for achieving the safety goals of the rulemaking at relatively low cost.

K. Costs

Chicago respondents testified that the cost of installing Supplemental Safety Measures (SSMs) or implementing Alternative Safety Measures (ASMs) that will permit the creation of quiet zones far exceeds cost estimates developed by FRA and represents an unfunded Federal mandate. The City of Chicago, Department of Transportation commented the rule would force the installation of four-quadrant gates at 237 crossings in the City. The Chicago Area Transportation Study estimated that the cost to implement quiet zones in the CATS region would be $200 million.

However, these arguments stem from the presumption that all crossings within a quiet zone will need to be equipped with four-quadrant gate systems. Other SSM's were dismissed by Chicago commenters as impractical for a variety of reasons. CATS Council of Mayors Executive Committee argued that the proposed safety measures are unworkable.

To test these criticisms, FRA conducted a preliminary cost analysis associated with implementation of quiet zones in several Chicago-area communities. The site-specific analysis was conducted at 12 highway-rail grade crossings in the communities of LaGrange, Western Springs and Hinsdale, and in each instance employed a corridor approach.

The analysis revealed that in some cases, public education efforts and increased enforcement of existing highway-rail crossing laws can be used in place of engineering solutions. At crossings where engineering improvements would be the most practical approach, the study found the costs of implementing a variety of SSM's would be significantly less than Chicago commenters estimated. Based upon the earlier estimates for effects of no-whistle policies in the Chicago Region, it was estimated that by utilizing the corridor risk reduction approach and utilizing engineering improvements at selected crossings that the total construction cost for these corridors would be $360,000 with an annual maintenance cost of $37,000. This is much less than estimates received from some commenters who erroneously assumed that four-quadrant gates would be required at each crossing. Actual costs under this rule should be even lower, since on many corridors, the required risk reduction of 15 percent can be taken at a single crossing.

In light of the greater flexibility of the interim final rule with respect to existing whistle bans, and the menu of engineering options, costs to convert existing whistle bans into quiet zones, or even create New Quiet Zones will be significantly less than most Chicago commenters estimated in responding to the NPRM. In instances where an existing quiet zone falls below the Nationwide Significant Risk Threshold, the only costs that would be incurred would be for maintenance of the Inventory data and posting of ''No Train Horn'' signs at crossings.

FRA understands the concern of commenters that paying for SSMs or ASMs where necessary to preserve or create a quiet zone may pose some fiscal hardships for some communities. Although this rule will not cost in excess of $100 million in any year, and thus is not subject to the assessment requirements of the Unfunded Mandates Reform Act of 1995, FRA has made every effort to limit the burdens that this rule imposes and to concentrate those

burdens where the safety rationale is most compelling.

L. Time for Implementation

Chicago respondents also argued that the time frame proposed for implementation of quiet zones was too short. The Illinois Commerce Commission projected that it would take ten years to implement the required safety measures. CATS Council of Mayors Executive Committee's estimate was as long as 15 years. They argued that the time it would take to do the work in more than 200 communities in the Chicago Region alone would overburden the railroad industry, tax Federal resources beyond their capacity to deliver, and be more of a burden than the railroad construction industry could handle within the required time frame. These arguments were generally based on the presumption that all crossings would need to be equipped with four-quadrant gate systems. Nevertheless, FRA gave careful consideration to this concern, and has provided significant additional time to implement quiet zones while also attempting to reduce the number of corridors for which supplementary or alternative safety measures will be required.

15. E.O. 15 Status

Emergency Order 15, issued in 1991, requires the FEC to sound locomotive horns at all public grade crossings. The Emergency Order preempted state and local laws that permitted nighttime bans on the use of locomotive horns. Amendments to the Order did, however, permit establishment of quiet zones if supplementary safety measures were implemented at every crossing within a proposed quiet zone. The supplementary safety measures specified in the Order, although similar, are not the same as those contained in this Interim Final Rule. The SSMs and the conditions on their implementation contained in this rule, provide communities substantially greater flexibility in creating quiet zones than those in the Order. So as not to adversely affect Florida communities along FEC tracks by imposing different standards for establishing quiet zones than along other Florida rail lines or elsewhere in the Nation, FRA will rescind E.O. on December 18, 2004, the effective date of this rule. At that time, the provisions of this rule will apply to all grade crossings within the State of Florida. Some communities along the FEC (communities subject to E.O. 15) may wish to establish New Quiet Zones following the effective date of this rule. FRA is not at this time calculating the effect of silencing the train horn along that corridor because information gathered in response to the NPRM was not sufficient to make such estimate and because the actual rate of increase experienced during the period studied prior to issuance of E.O. 15 requires re-examination to determine whether it remains valid in light of changed circumstances. FRA will determine whether to apply a regional estimate as to the effect of silencing the train horn at E.O. 15 crossings based on comments submitted in response to this interim final rule or through supplementary fact finding prior to the rescission of E.O. 15. FRA will issue the necessary finding well before the effective date of this interim final rule.

16. Section-by-Section Analysis

Section 222.1 What Is the Purpose of This Regulation?

This section describes the purpose of this regulation—to provide for safety at public highway rail grade crossings by regulating locomotive horn use at those crossings. In addition to regulating locomotive use at the crossings, the regulation provides an opportunity for the cessation of routine use of the locomotive horn at those crossings, while maintaining, at a minimum, the same level of safety as exists when horns are used.

Section 222.3 What Areas Does This Regulation Cover?

This section describes the areas, or scope, of the regulation. The regulation prescribes standards for sounding of locomotive horns when locomotives approach and pass through public highway-rail grade crossings. The regulation also addresses standards under which locomotive horns are not sounded when locomotives approach and cross public crossings. The regulation does not cover the use of horns at private crossings except when those private crossings are within a quiet zone. For a further discussion of private crossings, *see* § 222.25.

Section 222.5 What Railroads Does This Regulation Apply To?

This section describes the railroads to which this regulation applies. The regulation applies to every railroad with a number of listed exceptions. The regulation does not apply to (1) railroads exclusively operating freight trains only on track which is not part of the general railroad system of transportation; (2) passenger railroads that operate only on track which is not part of the general railroad system of transportation and which operate at a maximum speed of 15 miles per hour; and (3) rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

In the NPRM, FRA proposed to not apply the rule to plant railroads and freight railroads which are not part of the general railroad system of transportation. FRA noted that these operations are typically low speed with small numbers of rail cars permitting relatively short stopping distances. Additionally, these operations typically involve roadway crossings with relatively low speed vehicular traffic. These reasons, together with FRA's historical basis for not making its regulations applicable to plant and non-general-system freight railroads led FRA to propose not to apply the rule to such operations. Since use of the locomotive horn is a matter within the scope of railroad operating rules (*see* 49 CFR Part 217), maintaining reasonably consistent policies of inclusion and exclusion appeared sensible. Omitting plant railroads from the scope of the section is intended to leave State authorities with continuing jurisdiction over the subject matter of the appropriate audible warnings to be used by such railroads.

In the NPRM, FRA also discussed its basis for proposing to make the rule applicable to ''scenic'' or ''tourist'' railroads which are not part of the general system of railroad transportation. FRA took the position that since the rule deals directly with public grade crossings, it should apply to all tourist and scenic railroads with public grade crossings irrespective of whether they are part of the general system of railroad transportation. FRA took a similar position in its rule on grade crossing signal system safety, which applies to tourist and excursion railroads outside of the general system if they have attributes that make them non-insular, such as public grade crossings. *See* 49 CFR 234.3(c). The Association of Railway Museums, in opposing the inclusion of tourist and scenic railroads in what it termed as ''a general system rulemaking,'' stated that ''[i]f the operating characteristics which FRA has ascribed to plant and private freight railroads are sufficient to justify different treatment under the rule, they are certainly sufficient to justify different treatment of tourist/historic railroads.'' The commenter pointed out that FRA is required by statute to consider differences between tourist railroads and general system railroads, whereas there is no similar statutory requirement applicable to plant and ''private freight railroads.''

FRA believes that there are significant differences between industrial railroads

and tourist railroads that warrant exclusion of the former and inclusion of the latter in this rule. The primary and obvious difference, of course, is the presence of passengers in tourist operations, which increases the number of people at risk of injury in highway-rail accidents. The operating environments are also quite different, with tourist operations more likely to achieve higher speeds and encounter higher speed highway traffic than plant railroads. Moreover, FRA has historically not applied its rules to plant railroads (*see* the discussion of FRA's policy on the exercise of its jurisdiction in these circumstances, 49 CFR, part 209, appendix A) for reasons not applicable to tourist operations. However, as a result of the comments, FRA has reviewed this section and is persuaded that low speed passenger service (*i.e.*, at 15 miles per hour, or less) not on the general railroad system does not constitute a significant risk. Low speed service, together with relatively short trains, and comparatively light passenger cars permit significantly shorter stopping distances than fast, long, heavy freight trains. These conditions convinced FRA that such operations do not require the sounding of locomotive horns at this time. However, it should be noted that FRA may amend the rule in the future to include plant railroads or tourist railroads in the event that it determines that safety requires such action.

Paragraph (3) of this section addresses the extent to which rapid transit operations are governed by this part. Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. Like the proposed rule, the interim final rule tracks the statutory provision, excluding from the rule's reach only those rapid transit operations not subject to FRA's jurisdiction, *i.e.*, those not connected to the general system. However, shortly after issuance of the proposed rule, FRA issued an interpretive statement that explains what FRA believes ''connected to the general railroad system'' means. Statement of Agency Policy, 65 FR 42529 (2000); 49 CFR part 209, appendix A. FRA made clear that a passenger operation, even if rapid transit in nature, that shares the same track as a conventional railroad is subject to FRA jurisdiction on all shared track. FRA also made clear that highway-rail grade crossings traversed by a rapid transit operation and a conventional railroad that share a corridor but do not share track were sufficient connections to the general system to warrant FRA's exercise of jurisdiction over the rapid transit operation at the point of connection. 65 FR 42541. FRA pointed out that the rapid transit operation would be expected to observe FRA's rules concerning grade crossings that were then in effect, *i.e.*, the rules on grade crossing signals and ditch lights. *Id.* (FRA's proposed policy statement had made this same point; *see* 64 FR 59058 (1999).) FRA's policy statement explains the logic behind this determination:

> Certain types of connections the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line *to the extent it is connected.* FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. * * * [W]here transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its signal rules. For example, FRA expects both railroads to observe the provision of its rule on grade crossing signals that requires prompt reports of warning system malfunctions. *See* 49 CFR part 234. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations and, in the case of highway-rail grade crossings, to the motoring public. The safety of highway users of highway-rail grade crossings can best be protected if they get the same signals concerning the presence of any rail vehicles at the crossing and if they can react the same way to all rail vehicles (65 FR 42545; 49 CFR part 209, app. A).

This same logic clearly applies to audible warnings at highway-rail grade crossings: motorists are best protected if they receive the same warnings concerning the presence of rail vehicles at a crossing regardless of whether those vehicles are rapid transit or conventional rail. In light of FRA's July 2000 interpretive guidance that considers these crossings sufficient connections to warrant exercise of its jurisdiction, this interim final rule, which uses the same relevant language as the proposed rule, will apply to rapid transit operations that share grade crossings with conventional railroads in a common corridor, as well as to rapid transit operations that share track with conventional railroads.

However, applying this rule to rapid transit operations may pose certain problems. The horns in use on such rapid transit trains may not be able to meet the standards for audible warning devices in 49 CFR 229.129. Accordingly, new subsection (d) to § 222.129 excludes rapid transit operations from the ''audible warning device'' requirements of that section, which governs the sound levels of locomotive horns on general system railroads. FRA seeks comment on what standards may be appropriate for the audible warning devices used by rapid transit systems subject to part 222. Other impacts of applying the rule would include the need to involve yet another entity in the creation and enforcement of quiet zones. However, true quiet could not be achieved without the involvement of all entities that operate trains over those crossings.

Given the questions surrounding application of the rule in the shared corridor context, FRA solicits comments on this issue. Should FRA leave the applicability provisions of parts 222 and 229 as they are, *i.e.*, inclusive of rapid transit operations in shared corridors? Or, should FRA amend the applicability provisions of part 222 and 229 to exclude rapid transit operations that share highway-rail grade crossings with conventional operations but do not share trackage? If so, how can the rule's central purpose of achieving adequate train horn warnings at grade crossings be achieved, if those rapid transit operations would not be subject to the mandate to sound their horns? How would communities that have or wish to establish quiet zones achieve their goals if the rapid transit operations operating over shared corridors are not subject to the rule?

Section 222.7 What Is This Regulation's Effect on State and Local Laws and Ordinances?

This section informs the public as to FRA's intention regarding the preemptive effect of this interim final rule. While the presence or absence of such a section does not conclusively establish the preemptive effect of a final or interim final rule, it informs the public concerning the statutory provisions which govern the preemptive effect of the rule and FRA's intentions concerning preemption. Paragraph (a) points out the preemptive provision contained in 49 U.S.C. 20106, which provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard that is not inconsistent with a Federal law, regulation or order and that does not unreasonably burden interstate commerce, 49 U.S.C. 20106

will preempt any State statutory or common law, local ordinance or State or local regulatory agency rule covering the same subject matter as the regulations contained in this interim final rule. *See Norfolk Southern* v. *Shanklin,* 529 U.S. 344 (2000) and *CSX* v. *Easterwood,* 507 U.S. 658 (1993).

Paragraph (b) makes clear the intention of FRA that by including SSMs and ASMs in this regulation (or by approving additional SSMs or ASMs subsequent to issuance of this interim final rule), FRA does not intend to preempt State law regarding use of those measures for traffic control. Individual States may, consistent with Federal Highway Administration regulations and the MUTCD, continue to determine whether specific SSMs or ASMs are appropriate for traffic control. State law and local ordinances concerning sounding of train horns in relation to the use of conventional crossing safety systems, SSMs and ASMs are, however, preempted. Thus, if a specific engineering improvement is approved as an SSM for purposes of this rule, and consistent with FHWA regulations and the MUTCD, a State has the discretion whether to accept its use for traffic control purposes. If a State decides that such SSM cannot be used within the State, such decision is not meant to be preempted by this rule—this interim final rule would not force State acceptance of an SSM. However, any State law or regulation relating the use of train horns to the SSM would be preempted by this rule.

The interim final rule published today permits localities to establish quiet zones irrespective of any State law regarding sounding of train horns or establishment of whistle bans and quiet zones. This view differs from that which FRA stated in the preamble to the NPRM—that the proposed rule ''does not confer authority on localities to establish quiet zones if state law does not otherwise permit such actions.'' Both the CPUC and the Florida Department of Transportation expressed the view that the rule should allow States to impose more stringent requirements for establishing quiet zones. Expressing an opposite view, the mayor of Middleburg Heights, Ohio is in favor of ''empower[ing] the local elected officials to make the best decisions for their community. Local officials on the scene are more capable of judging any internal budgetary, safety or quality of life issues.'' The representative of the Metropolitan Council of Governments, representing two cities in Minnesota and two cities in North Dakota, points out that because North Dakota currently prohibits quiet zones, the Council of Governments wants the rule so as to be able to establish quiet zones. Counsel for the League of Wisconsin Municipalities, representing all of the cities and most of the villages in Wisconsin, stated that municipalities in Wisconsin are granted broad home rule powers and thus are concerned about the preemption of their authority to regulate the use of train horns within their communities. Wisconsin State Representative Miller expressed similar views. The County Commissioner of Olmstead County, Minnesota, testified to his opposition to additional preemption of State and local authority.

While the commenters representing local government may prefer to have no regulation of their ability to institute quiet zones, the decision as to the regulatory body has already been made by Congress. The issue raised in the NPRM, however, is whether, despite issuance of this rule, States may prohibit or permit localities to establish quiet zones. FRA is rejecting the view posited in the NPRM that the rule does not confer authority on localities to establish quiet zones if State law does not otherwise permit such actions. A close review of the statutory language leads to the conclusion that Congress intended that local communities be the primary parties in establishing quiet zones as long as this is done in accordance with Federal rules. Moreover, there can be no doubt that such State laws would clearly be within the subject matter covered by this rule, and would therefore be preempted.

Section 222.9 Definitions

This section defines various terms which are not widely understood or which, for purposes of this rule, have very specific definitions. This section defines the following terms:

''Administrator''

This definition makes clear that when the term ''Administrator'' is used in the rule, it refers to the Administrator of the Federal Railroad Administration. It also provides that the Administrator may delegate authority under this rule to other Federal Railroad Administration officials.

''Alternative safety measure''

This term was not included in the definition section of the NPRM. It is included in this section because of its unique meaning within this rule. The term ''alternative safety measure'' refers to a safety system or procedure established in accordance with this rule and which has been determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. All ASMs and SSMs listed as approved in appendices A and B have been approved by the Administrator. Section 222.55 addresses how new SSMs and ASMs are approved. Such new SSMs and ASMs are approved by the Associate Administrator.

''Alternative safety measure'' should be read in conjunction with the definition of an SSM. Both SSMs and ASMs are safety systems or procedures determined to be an effective substitute for the locomotive horn in the prevention of highway rail casualties at highway-rail grade crossings. SSMs have been determined by the Administrator in appendix A to be effective substitutes for the horn at any grade crossing to which they are applied. Thus, the Administrator has determined that if, for example, four-quadrant gates are appropriately installed at a grade crossing, the warning and protections provided will at least equal that provided by the locomotive horn. Because these safety measures will compensate for the lack of the locomotive horn wherever they are used, FRA has not required prior approval for their use at specific locations. ASMs differ from SSMs in that they are capable of being an effective substitute for the locomotive horn, but can only be determined to be effective on a crossing-by-crossing basis. Because of that limitation, use of such ASMs requires prior approval of the Associate Administrator.

Appendix B lists ASMs currently accepted for the Associate Administrator's review on an individual crossing-by-crossing basis.

''Associate Administrator'' means the Associate Administrator for Safety of the Federal Railroad Administration. The term also includes the Associate Administrator's delegate.

''Channelization device'' means one of a continuous series of highly visible vertical markers placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. This term was defined in more detail in the NPRM—minimum height and distance requirements were listed. Rather than dictating such detail to the community installing the devices, the present definition states that design specifications are determined by the standard design specifications used by the governmental entity constructing the channelization device. However, any channelization device used shall comply with the MUTCD and should be in compliance with applicable guidelines of the American Association of State Highway and Transportation Officials. The definition thus makes

explicit that ''tubular markers'' and ''vertical panels'' as described in sections 6F.57 and 6F.58, respectively, of the MUTCD, are acceptable channelization devices for purposes of this part. This change is consistent with a comment submitted by Winter Park, Colorado in which the community requested more flexibility in the definition/design of channelization devices.

''Crossing Corridor Risk Index'' is a number reflecting the relative risk to motorists at grade crossings within a grade crossing corridor in which locomotive horns are routinely sounded. This number is derived by calculating the number of predicted collisions per year at each public grade crossing within a corridor of crossings. A risk index reflecting the predicted likelihood and severity of casualties resulting from those collisions for each crossing is then calculated. An average risk index for the entire group of crossings within the corridor is then calculated (by summing the risk index for each crossing and dividing the total by the number of crossings within the corridor). This average risk is the Crossing Corridor Risk Index. It reflects the present risk associated with a crossing corridor, before the level of risk changes due to silencing of locomotive horns or implementation of SSMs or ASMs. Details on determining the Crossing Corridor Risk Index are provided in Appendix D of this part.

''Diagnostic team'' means a group of knowledgeable representatives of parties in interest in a highway-rail grade crossing, organized by the public authority responsible for, or funding improvements at, the crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations and recommendations for the public authority concerning safety needs at that crossing. A diagnostic team can consist of the local traffic or highway engineer, and representatives of various parties including the local public works department, the railroad whose tracks are crossed, the State department of transportation, local law enforcement, and emergency responders. The diagnostic team, ideally having representatives of major interested parties, can evaluate a crossing from many perspectives and can make recommendations as to the safety needs at the crossing.

''Effectiveness rate'' is a number which indicates the effectiveness of a safety measure in reducing the probability of a collision at a public highway-rail grade crossing. Effectiveness rate is defined as a number between zero and one which represents the reduction of the probability of a collision at a public highway-rail grade crossing as a result of the installation of a safety measure when compared to the same crossing equipped only with conventional gates and lights. An effectiveness rate of zero indicates that the safety measure provides no reduction in the probability of collision. The safety measure is not effective at all. At the other extreme, a safety measure of one indicates that the safety measure is totally effective in reducing collisions. Grade separation would fall into the latter category—separating railroad tracks from the roadway is totally effective in reducing grade crossing collisions. Values between zero and one reflect the percentage by which the safety measure reduces the probability of a collision. For example, if a safety measure has an effectiveness rate of .75, it reduces the probability of a collision at the crossing by 75 percent. Conversely, if a safety measure has only an effectiveness rate of .05, it would reduce the probability of a collision by only 5 percent.

The few comments FRA received on this topic were negative. The Illinois Commerce Commission, while not objecting to the definition itself or concept, complained that the ''ratios are arbitrary guesses which have little empirical value.'' The CPUC similarly felt that there are insufficient data to assign effectiveness rates. They stated that instead ''[t]he effectiveness of an SSM * * * should be evaluated by the applicant, the railroad, and the regulating state agency for each individual crossing in a quiet zone.''

FRA recognizes that, to the extent effectiveness estimates have been derived from limited data, they should not be treated as sacrosanct. Further, individual crossing characteristics may be more or less compatible with realizing the benefits of particular safety measures. Accordingly, the concept of alternative safety measures is incorporated into this rule with the expectation that diagnostic teams will be able to estimate effectiveness with a higher degree of refinement, working (as relevant) from the benchmark levels provided for supplementary safety measures. The expertise available at the State level will contribute to this process of refinement. On the other hand, FRA is not comfortable with the idea of proceeding without benchmark values. Far from being arbitrary guesses, the benchmark values take into consideration and reflect substantial information available at the national level, and they have been exposed to the scrutiny of public comments in this proceeding. Since they are conservative in nature, reliance upon them in the context of application of SSMs to all crossings in a quiet zone should be entirely appropriate in virtually every case. The individual judgments of local public authorities or State level officials cannot be assumed, *a priori,* to be superior to these benchmarks, particularly where the personnel involved have no experience in the use of particular safety measures (many of which are new to the realm of highway-rail crossing safety).[12] Balancing these concerns, FRA has attempted to craft a structure that fosters consistency while inviting attention to project-specific considerations and enabling the use of professional engineering judgment where warranted.

''FRA'' means the Federal Railroad Administration.

''Grade Crossing Inventory Form'' means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov.*

''Locomotive'' means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—(1) With one or more propelling motors designed from moving other equipment; (2) with one or more propelling motors designed to carry freight or passenger traffic or both; or (3) without propelling motors but with one or more control stands. This definition is being added as a result of a suggestion from the AAR.

''Locomotive horn'' means a locomotive air horn, steam whistle, or similar audible warning device mounted on a locomotive or control cab car. The terms ''locomotive horn'', ''train whistle'', ''locomotive whistle'', and ''train horn'' are used interchangeably by many people to denote the audible warning device mounted on a locomotive or control cab car.

''Median'' means the portion of a divided highway separating the travel ways for traffic in opposite directions.

''MUTCD'' means the Manual on Uniform Traffic Control Devices issued by the Federal Highway Administration.

''Nationwide Significant Risk Threshold'' means a number, calculated on a nationwide basis, which reflects the average level of risk at public

[12] See Report to Congress entitled *North Carolina ''Sealed Corridor'' Phase I U.S. DOT Assessment Report* (FRA Office of Railroad Development, September 2001), which describes most of the pioneering work undertaken by the State of North Carolina and the Norfolk Southern Railroad (with FRA funding assistance) in support of the State's high-speed rail program.

highway-rail grade crossings equipped with lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in Appendix D of this part. In determining this risk threshold, FRA determines the average level of risk at public highway-rail grade crossings equipped with lights and gates and at which locomotive horns are sounded. This data pool in essence provides the starting point for communities in establishing quiet zones. Because every grade crossing in a New Quiet Zone must, at a minimum, be equipped with conventional lights and gates, a community will be able to determine the risk level associated with the crossings within the proposed quiet zone.

''New Quiet Zone'' means a segment of rail line within which is situated one, or a number of consecutive public highway-rail crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as a Pre-Rule Quiet Zone.

''Non-traversable curb'' means a highway curb designed to discourage a motor vehicle from leaving the roadway. FRA is not specifying design details for such curbs beyond requiring, that they be at least six inches but not more than nine inches high. Such curbs are often combined with median islands at least two feet wide. If the curbs are not equipped with reboundable, reflectorized vertical markers, paint and reflective beads should be applied to the curb for night visibility. Additional design specifications are determined by the standard traffic design specifications used by the governmental agency constructing the curb. The term ''non-traversable curb'' is replacing the term ''barrier curb'' as proposed in the NPRM due to its greater acceptance in the highway community. FRA has also deleted from the rule the definition of ''mountable curb'' because that term is not being used in the rule.

''Power-out indicator'' means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

''Pre-Rule Quiet Zone'' means a segment of a rail line within which is situated one, or a number of consecutive public or private highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003. As proposed, this definition includes quiet zones enforced or observed as of the date of passage of Public Law 104–264, which amended 49 U.S.C. 20153 to require the Secretary to take into account the interest of communities that ''have in effect'' restrictions on the sounding of a locomotive horn at highway-rail grade crossings or have not been subject to the routine sounding of a locomotive horn at highway-rail grade crossings. FRA reads the statute as requiring FRA to be particularly solicitous of communities that had restrictions in effect at the time of the 1996 enactment. FRA has added the requirement that the ordinance or agreement was observed or enforced as of the date of publication of this interim final rule because it would make little sense to reinstate a ban abandoned by the community (or determined to be inconsistent with State law) and because use of information from the more recent date will permit FRA to achieve greater certainty as to the status of bans and eligibility for Pre-Rule Quiet Zone status. In particular, FRA has noted some year-to-year variability in the no-whistle policies observed in Illinois during the 1990s; and achieving certainty as to the status of individual line segments has proven much more difficult than FRA anticipated in issuing the proposed rule.

''Private highway-rail grade crossing'' means, for purposes of this part, a highway-rail at grade crossing which is not a public highway-rail grade crossing. When viewed in light of the definition of public highway-rail grade crossings, a private crossing is a crossing where a private roadway crosses one or more railroad tracks at grade, and at which a public authority does not maintain the roadway on either side of the crossing. References in this rule to ''private grade crossing'' or ''private crossing'' refer to a private highway-rail grade crossing.

''Public authority'' means the public entity responsible for safety and maintenance of the roadway that crosses the railroad tracks at a public highway-rail grade crossing. This term includes the traffic control authority or law enforcement authority, or the governmental jurisdiction having responsibility for motor vehicle safety at the crossing.

''Public highway-rail grade crossing'' means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. In the event a public authority maintains the roadway on at least one side of the crossing, the crossing is considered a public crossing for purposes of this part. The second sentence of this definition is often included in a definition of public grade crossing, but was inadvertently omitted from the NPRM. References in this rule to ''public grade crossing'' or ''public crossing'' refer to a public highway-rail grade crossing.

''Quiet Zone'' means a segment of a rail line, within which is situated one or a number of consecutive public or private highway-rail crossings at which locomotive horns are not routinely sounded. This definition has been modified slightly from that proposed in the NPRM. The phrase ''locomotive horns may not be routinely sounded'' has been changed to ''locomotive horns are not routinely sounded'' to more effectively indicate the non-permissive nature of the ban on routine sounding of horns within the quiet zone. Additionally, ''private crossings'' has been added to the definition in recognition that a quiet zone may have a combination of both public and private crossings at which routine horn use is prohibited.

''Quiet Zone Risk Index'' means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for (1) increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings), and (2) reduced risk due to implementation, if any, of SSMs and ASMs within the quiet zone. The Quiet Zone Risk Index is calculated in accordance with the procedures in Appendix D of this part. The Quiet Zone Risk Index is thus a measure of risk at crossings within the quiet zone after all adjustments to risk have been made. This measure is necessary in comparing the risk level to the Nationwide Significant Risk Threshold.

''Railroad'' means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was

operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

''Relevant collision'' means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. The term ''relevant collision'' has been included in this rule to provide a basis for reviewing the safety history at a crossing while ensuring that collisions not relevant to the direct issue of motorist decision-making are omitted from the analysis.

''Supplementary safety measure'' (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A to this part lists such supplementary safety measures.

''Waiver'' means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

''Wayside horn'' means a stationary horn (or device designed to produce a sound resembling a horn) located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

Section 222.11 What Are the Penalties for Failure To Comply With This Regulation?

This section, which has not changed from that proposed in the NPRM, identifies the civil penalties that FRA may impose upon any person, including a railroad that violates any requirement of this part. The penalty provision parallels penalty provisions included in many other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. (Maximum penalties of $11,000 and $22,000 are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub.L. 101–410) (28 U.S.C. 2461 *note*), as amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104–134, 110 Stat. 1321–373) which requires each agency to regularly adjust certain civil monetary penalties in an effort to maintain their remedial impact and promote compliance with the law.) Furthermore, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved. The interim final rule includes a schedule of civil penalties as Appendix G to this part. Because the penalty schedule is a statement of agency policy, notice and comment was not required prior to its issuance. *See* 5 U.S.C. 553(b)(3)(A).

New Jersey DOT requested that FRA clarify this section ''to assure one that the application of a safety measure such as an audible warning device is not subject to civil or criminal penalties.'' While the meaning of this comment is not clear, FRA intends that the routine sounding of a locomotive horn in a quiet zone will subject the railroad to civil penalties, as would not sounding the horn at a public crossing outside of a quiet zone.

Section 222.13 Who Is Responsible for Compliance?

This section is intended to make clear that any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

Section 222.15 How Does One Obtain a Waiver of a Provision of This Regulation?

This section governs the process for obtaining a waiver from a provision of this regulation. There was confusion on the part of some commenters regarding the meaning and purpose of waivers. Some commenters incorrectly considered waivers to be synonymous with exceptions from the requirement to sound the horn. In an effort to further clarify this section, FRA has added ''waiver'' to the list of defined terms in section 222.9. It is defined as ''a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.''

FRA has historically entertained waiver petitions from parties subject to an FRA regulation. In many instances, a regulation, or specific section of a regulation, while appropriate for the general regulated community, may be inappropriate when applied to a specific entity. Circumstances may make application of the regulation to the entity counter-productive; an extension of time to comply with a regulatory provision may be needed; or technological advancements may result in a portion of a regulation being inappropriate in a certain situation. In such instances, FRA may grant a waiver from its regulations. The rules governing FRA's waiver process are found in 49 CFR part 211. In summary, after a petition for a waiver is received by FRA, a notice of the waiver request is published in the **Federal Register**, an opportunity for public comment is provided, and an opportunity for a hearing is afforded the petitioning or other interested party. FRA, after reviewing information from the petitioning party and others, will grant or deny the petition. In certain circumstances, conditions may be imposed on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or if they are in the public interest. Because this regulation's affected constituency is broader than most of FRA's rail safety regulations, the waiver process is proposed to be somewhat different. Paragraphs (a) and (b) address the aspects which are different than FRA's customary waiver process. However, as paragraph (c) makes clear, once an application is made pursuant to either paragraph (a) or (b), FRA's normal

waiver process, as specified in 49 CFR part 211, applies.

Paragraph (a) of this section addresses jointly submitted waiver petitions as specified by 49 U.S.C. 20153(d). Such a petition must be submitted by both any railroad whose tracks cross the highway and by the appropriate traffic control authority or law enforcement authority which has jurisdiction over the roadway crossing the railroad tracks. Although section 20153(d) requires that a joint application be made before a waiver of a provision of this regulation is granted, FRA, in paragraph (b), addresses the situation that may occur if the two parties can not reach agreement to file a joint petition. Section 20153(i)(3) gives the Secretary (and, by delegation, the Administrator) the authority to waive in whole or part any requirement of section 20153 (with certain limited exceptions) if it is determined not to contribute significantly to public safety. FRA thus has decided to accept individually filed waiver applications (under certain conditions) as well as jointly filed applications. In an effort to encourage the traffic control authority and the railroad to agree on the substance of the waiver request, FRA requires that the filing party specify the steps it has taken in an attempt to reach agreement with the other party. Additionally, the filing party must also provide the other party with a copy of the petition filed with the FRA.

It is clear that FRA prefers that petitions for waiver reflect the agreement of both entities controlling the two transportation modes at the crossing. If agreement is not possible, however, FRA will entertain a petition for waiver, but only after the two parties have attempted to reach an agreement on the petition.

Paragraph (c) provides that each petition for a waiver must be filed in the manner required by 49 CFR part 211.

Paragraph (d) provides that the Administrator may grant the waiver if the Administrator finds that it is in the public interest and that safety of highway and railroad users will not be diminished. The Administrator may grant the waiver subject to any necessary conditions required to maintain public safety.

Section 222.21 When Must a Locomotive Horn Be Used?

Paragraph (a) of this section addresses the duty to sound the locomotive horn when approaching and passing through a public highway-rail grade crossing. The locomotive horn shall be sounded when such locomotive or lead car is approaching and passes through each public highway-rail grade crossing. This paragraph also requires that sounding of the horn be in the pattern of two long, one short, and one long blast be initiated at the place specified in paragraph (b) of the section and that the pattern be repeated or prolonged until the locomotive or train occupies the crossing. This paragraph also states that the pattern may be varied as necessary where crossings are spaced closely together.

FRA proposed to adopt the industry standard pattern for sounding of horns at grade crossings. FRA received a number of requests that we define what ''long'' and ''short'' horn blasts are. The apparent intent of the commenters is to ensure that the locomotive horn not be sounded excessively when entering a grade crossing. It is clear that some engineers at some times ''lean on the horn'' for longer periods than is common in the industry. Despite this, the vast majority of engineers apply the locomotive horn appropriately. Imposing strict time requirements for the sound pattern would impose unrealistic limits on engineers and add to their already full workload. The Florida East Coast Railway recommended that the horn pattern be left up to the individual railroad. While some locomotive horns can be preprogrammed with specific horn sequences, FRA will not be requiring such horns, nor has a need for them yet been shown. FRA is thus retaining the proposed language of ''long'' and'short'' blasts. FRA is also leaving to the railroad or individual engineer the decision as to how to vary the horn pattern when crossings are spaced closely together. Such decisions have been made by these parties for many years, and there has been no showing that there is a need to alter those determinations.

Paragraph (b) of the NPRM addressed the location at which the locomotive horn needs to begin being sounded. The basic premise of this section as proposed in the NPRM was that the locomotive horn should be sounded no less than 20, nor more than 24 seconds in advance of a grade crossing, but in no event could the horn be sounded more than ¼ mile in advance of the crossing.

Research has shown that the effect of a locomotive horn sounded at a distance greater than ¼ mile from a crossing is attenuated to the extent that it does not provide warning to the motorist. The NPRM relied on the presence of whistle boards to notify the engineer when to sound the horn. Thus the proposal went into great detail regarding the present location of whistle boards and adjusting the location of whistle boards in the future. However, the BLE, representing the majority of railroad engineers in the country, testified that engineers did not need variably-placed whistle boards to indicate the proper location at which to sound horns. The BLE testified that engineers could provide a time-based warning if asked to do so. As a result, FRA has revised paragraph (b) to simply provide a range of time between which the locomotive horn must be sounded in advance of a grade crossing, while retaining the outside limit of ¼ mile.

As noted above, FRA proposed that the horn be sounded at least 20, but not more than 24 seconds, before the locomotive enters the crossing. This proposal generated a number of comments, the majority of which objected that the proposal required the horn to be sounded for an excessive period of time. Missouri's Division of Motor Carrier and Railroad Safety stated that the ''range of 20 to 24 seconds will be difficult for engineers to determine when not traveling near maximum authorized speed.'' The agency recommended a minimum of 15 seconds, which provides, according to the agency, a 10 second margin. The Commissioner of the City of Aventura, Florida stated that 20 seconds may be acceptable during the day, but is unreasonable at night. The Commissioner suggested 10 seconds of warning during nighttime hours. The Florida East Railway said that it wasn't aware of technology to enable a train moving at less than maximum authorized speed to properly blow the horn within 20 to 24 seconds. The FEC recommended further thought on the subject. The FEC further stated that if FEC train speed is 60 miles per hour, the one-quarter mile limit only provides for 15 seconds warning rather than 20 to 24 seconds warning. The FEC is correct, and as noted below, that is the desired result.

As a result of comments received and the results of its research on this issue, FRA has revised the proposal to provide that the locomotive horn be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing, but in no event shall a locomotive horn sounded in accordance with paragraph (a) be sounded more than one-quarter mile in advance of a public highway-rail grade crossing. This provision as revised recognizes that establishing only a set location at which horns must be sounded (as is the case under many present State laws), has the potential to disrupt local communities without affecting the warning provided to the motorist. Because a fixed location for sounding of a horn results in differing periods of warning depending on the speed of the train, FRA chose to

eliminate the traditional fixed point at which the locomotive horn needs to be sounded. Rather, the length of time of the warning is the operative factor as to when to begin sounding the horn. FRA is providing the locomotive engineer a range of 15 to 20 seconds in advance of the crossing in which to sound the horn. This provision will prevent much unnecessary disruption to surrounding communities. Under present law in many States, a train traveling at 15 miles per hour would sound its horn for 60 seconds (over a full quarter mile) if required to initiate the sounding one-quarter mile in advance of the crossing. Under this rule, such a train traveling at 15 miles per hour would sound its horn for 15 to 20 seconds, but would only sound it over a distance of from 330 feet to 440 feet. Ample warning is provided the motorist while preventing unnecessary noise among the surrounding community. At the other end of the spectrum, a train traveling at 79 miles per hour travels more than four tenths of a mile in 20 seconds, and thus would only sound its horn for less than 12 seconds under this rule. It is clear that excessive horn noise would be generated if the horn were to be sounded for a full 20 seconds, since the horn sound is not effective as a warning beyond one-quarter mile. Thus, as proposed in the NPRM, FRA is limiting the sounding of the horn to a maximum of one-quarter mile in advance of a crossing, regardless of train speed. Sound diminishes at a rate of approximately 7.5 dB(A) for each doubling of distance. Thus, the sound from a locomotive horn registering 100dB(A) at 100 feet in front of the locomotive will have diminished to roughly 75 dB(A) at one-quarter mile in front of the locomotive. That distance is near the outer margin of utility in terms of alerting the motorist to oncoming trains at that crossing.

Section 222.23 How Does This Regulation Affect Sounding of a Horn During an Emergency or Other Situations?

Paragraph (a)(1) of this section is meant to make clear that a locomotive engineer may sound the locomotive horn in emergency situations. Notwithstanding any other provisions of the rule, a locomotive engineer may sound the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage. Thus, establishment of a quiet zone and the limits established on the length of time a horn may be sounded, are not intended to prevent the engineer from using his or her discretion in emergency situations. CPUC recommended that FRA add ''or at the discretion of the locomotive engineer'' at the end of this paragraph because it is claimed that the proposed language places a burden on the engineer to prove that an emergency situation existed which would have resulted in imminent injury, death or property damage. FRA agrees that the engineer should not have the burden to prove that an emergency existed. We believe the present language is sufficiently clear to relieve the engineer of that burden. The BLE expressed ''complete agreement'' with the proposed language, as does the Mayor of Boca Raton, Florida. With the exception of minor proposed language change, the AAR also agrees with the proposal.

The AAR suggested that the phrase ''[N]othing in this part'' be replaced with ''A railroad shall not be prohibited or restricted from using'' in paragraph (b). The AAR claims that ''FRA does not go far enough in addressing the railroads' need to sound horns for purposes other than to warn the public of trains approaching grade crossings or to warn roadway workers. Locomotive engineers use horns in other circumstances, such as when approaching passenger stations and to alert railroad employees to the pending movement of a train. It would be unsafe to prohibit the use of locomotive horns for such purposes. Consequently, FRA should specifically prevent States and localities from restricting railroads from sounding the locomotive horn for railroad operating purposes.'' While the substance of AAR's proposal has merit, the scope of this rulemaking is limited to locomotive horn use at grade crossings. Extending the regulatory framework beyond this limited area would require further rulemaking. To avoid misunderstanding regarding the subject matter subsumed by the rule, however, FRA has added the words, ''or where required for other purposes under the railroad operating rules'' at the end of this section.

This paragraph has been further changed slightly from the NPRM. The phrase, ''including establishment of quiet-zones, or limits on the length of time in which a horn may be sounded'' has been added to this paragraph to make clear that nothing in the rule, including the creation of quiet zones, or rules setting limits on where and when horns are sounded, shall prevent an engineer from using the horn as a warning in an emergency situation.

Paragraph (a)(2) is intended to make clear that while the rule does not preclude the sounding of the locomotive horn in emergency situations, the rule also does not impose a legal duty to sound the locomotive horn in such situations. It is FRA's intent that this section, and the rule as a whole, subsume the subject matter of sounding the locomotive horn at public grade crossings, including the sounding of locomotive horns within quiet zones during emergency and non-emergency situations. Absent the paragraph, it is conceivable that a railroad or engineer or both, could be found liable for damages resulting from a collision with an automobile at a grade crossing under the theory that the horn should have been sounded even though the crossing is within a quiet zone. It is the intent of FRA, that once a public authority creates a quiet zone pursuant to this part, the railroad and locomotive crew are relieved from any legal duty to sound the locomotive horn in an emergency situation. The rule's dual purpose of ensuring safety and reducing train horn noise where safety can reasonably be assured without horn use would be defeated if railroads felt compelled to make liberal use of the train horn in quiet zones merely to avoid being sued for not using it. Moreover, railroads and their crews would be placed in an untenable legal position, being prohibited from routine sounding of the horn but possibly being held liable for not sounding the horn if a collision does occur in a quiet zone and a plaintiff argues that the horn should have been sounded. Of course, we are confident that railroads and their engineers, given their very strong interest in avoiding crossings accidents, will err on the side of caution in using their discretion to determine which situations are truly emergencies warranting use of the horn.

In paragraph (b), the NPRM provided that nothing in this part restricts the use of the locomotive horn to announce the approach of the train to roadway workers in accordance with a program adopted under part 214 of this Chapter or where active warning devices have malfunctioned and use of the horn is required by either 49 CFR 234.105 (activation failure), 234.106 (partial activation), or 234.107 (false activation). This makes clear that locomotive horns must still be sounded in accordance with the listed regulations irrespective or the existence of a quiet zone. Such provisions have been established to provide warning to railroad employees working on and along the track and to motorists when grade crossing warning

systems malfunction. The BRS expressed their support for this paragraph, stating that it is ''imperative that this remain unchanged. An important element of safety for roadway workers is the warning conveyed by the engineer.'' With the exception of the additional language pertaining to railroad operating rules discussed above, the paragraph remains unchanged from the NPRM.

Section 222.25 How Does This Rule Affect Private Highway-Rail Grade Crossings?

This section clarifies the manner in which this rule affects private crossings. (Section (f) of the Act explicitly gives discretion to the Secretary as to the question of whether to subject private highway-rail grade crossings to the regulation.) FRA has determined that exercising its jurisdiction in a limited manner regarding these crossings is the appropriate course of action.

Although the subject of private crossings was discussed in the preamble to the NPRM, a specific regulatory section was not included. In an effort to clearly set out the manner in which the rule affects private crossings, this new § 222.25 is included in the rule.

Although only a relatively small number of commenters addressed the issue of the rule's applicability to private crossings, the majority of commenters suggested that the rule should apply to private crossings to some extent. For example, both the Missouri Department of Economic Development (MDED) and the CPUC recommended that the proposed rule apply to private crossings in the same manner as public crossings. The MDED explained that many private highway-rail grade crossings, especially those in rural areas where trains usually travel at speeds near the maximum authorized, have hardly any warnings indicating the presence of the crossings. The CPUC explained that some private crossings carry very high volumes of truck or employee automobile traffic at particular times. The CPUC also pointed out that California law on the use of locomotive horns at crossings applies to all crossings, both public and private, and that no empirical data exists that justifies reduced protection for private crossings in quiet zones. Accordingly, the CPUC also recommended that entities seeking to establish quiet zones should be required to provide notice of their intent to all owners of private property within the proposed zone.

Similarly, the New York Department of Transportation explained that almost half the grade crossings in New York are private, but many function essentially as public crossings, with free access by anyone at any time of the day. Accordingly, the New York DOT suggested that the proposed rule apply to high-risk private crossings, as well as public crossings. The agency suggested that the determination of whether a private crossing was a high risk crossing could be based on a calculation similar to the New Hampshire Index, an analysis of train and highway volume. Alternatively, the agency suggested that a more complex review considering additional factors such as highway and train speed, as well as the type of railroad operations involved (*e.g.*, intercity, commuter, freight, etc.) might be appropriate.

The UTU indicated it has ''a problem with not requiring improved protection for private crossings in a quiet zone.'' The UTU expressed the view ''that not to require a private crossing or crossings within the quiet zone to be similarly equipped as a public crossing will allow an unsafe condition to exist.'' Similarly, the CPUC is in favor of ''applying the standards to all railroads, public, private, plant, because the motoring public cannot distinguish these categories.''

Although not recommending that the proposed rule apply to private crossings in the same manner as public crossings, two local governments suggested that to ensure private crossings in quiet zones are safe, the rule should require advance warning signs advising users of the crossings that train horns will not be sounded. In addition, these commenters, the City of Moorhead, Minnesota, and the City of Fargo, North Dakota, suggested that the provision of the proposed rule addressing implementation of quiet zones, be revised to specifically indicate that railroad operations in established quiet zones should cease routine use of horns at private crossings, as well as public crossings.

FRA understands the concern expressed by those commenters recommending that private crossings be addressed in the same manner as public crossings. FRA remains unconvinced that private crossings at this time should be subject to Federally imposed mandatory sounding of horns. In expressing this view in the NPRM, FRA stated that ''[A]lthough some private crossings experience heavy rail and motor vehicle use, we do not have sufficient information as to present practices, the number and type of such diverse crossings, and the impacts of locomotive horns at such crossings. Thus, FRA will not at this time require that the locomotive horn be sounded at private highway-rail crossings. Whether horns must be sounded at such crossings will remain subject to State law (if any) and agreements between the railroad and the holder of crossing rights.'' As noted by the CPUC, California State law requires use of horns at private crossings. We note that FRA, by not applying this rule to private crossings which are not in quiet zones, has left States free to require the sounding of locomotive horns if it is determined by the appropriate State authority that it is appropriate given the circumstances within that State. Similarly, to the extent they are not constrained by Federal law (within a quiet zone) or State law, railroads remain free to elect whether to sound the horn at private crossings.

An FRA requirement to sound the horn at all private crossings would in some respects have more impact than the requirement to sound the horn at public crossings. By requiring the latter, Congress merely Federalized what had been uniform practice throughout the United States. Horns have sounded at public crossings for many decades throughout the country, first by railroad rules, and later based on State law. Horn use at private crossings, has, however, generally not been regulated by the States (presumably because there was less need for such requirement at private crossings), and horn use has thus been left up to railroads. Thus, if FRA were to require horn use at each of the more than 98,000 private crossings throughout the nation, the environmental impact in terms of increased noise would be significant. It is unclear at this time, based on the data available, if there would be a corresponding increase in safety as a result. Therefore, other than its effect on private crossings within quiet zones, the rule is not meant to affect present State laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive horns at private highway-rail grade crossings. *See* § 222.7.

FRA does agree that evaluation of the use of the train horn at private crossings merits further study. Because private crossings are generally not controlled by State transportation or regulatory officials, the current national inventory does not provide details regarding key data elements required to evaluate safety at individual private crossings to the same extent possible at public crossings. Clearly, further information is needed concerning the potential utility of using train horns at private crossings and the collateral issues such a policy might entail (including the effects on crew noise dose). FRA will pursue these issues in the context of a forthcoming

review of safety at private highway-rail crossings.

There was also general agreement among commenters of the need to consider safety at private crossings located within proposed quiet zones. We agree. Although many private crossings do not present high risk in comparison with active public crossings (*e.g.*, entrances to individual residences; lightly used agricultural crossings), other private crossings may present considerable risk. In some cases, railroads instruct crews to sound the horn at particular private crossings where risk is perceived to be high; in other cases train horns provide effective warning as an accident of geography (*i.e.*, where the private crossing is sandwiched between two nearby public crossings). Although, as noted, the statute does not mandate that FRA require use of the train horn at private crossings, it is imperative that actions to facilitate establishment of quiet zones not significantly increase risk at these crossings, and that their presence in the midst of public crossings not be allowed to defeat the purpose of a quiet zone.

This section specifically states that this rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Although FRA has jurisdiction over locomotive horn use at private crossings based on both 49 U.S.C. 20153 and 49 U.S.C. 20103, it has not exercised that jurisdiction at this time except as to the use of horns at private crossings within quiet zones.

Paragraph (a) of this section provides that private highway-rail grade crossings may be included in a quiet zone. To do otherwise would defeat the purpose of such a quiet zone. Paragraph (b) provides that private grade crossings which allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing to determine whether the institution of the quiet zone will significantly increase risk at the private crossing. The crossing must then be equipped or treated in accord with the recommendations of such team. A diagnostic team is composed of a group of knowledgeable representatives of the parties of interest in a grade crossing. Typically, the team would be composed of railroad personnel, public safety or law enforcement representatives, and engineering personnel for the public authority. In appendix F, FRA has set forth crossing safety issues for the diagnostic team to consider. The diagnostic team, using crossing safety management principles, should evaluate conditions at the grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what improvements might be needed to compensate for the lack of a train horn at the crossing. FRA will expect that the results of diagnostic review will be reflected in the filings submitted under § 222.39, so that FRA can determine the appropriateness of the proposed action.

The following options should be available if the diagnostic team determines that the private crossing could experience increased significant risk as a result of quiet zone implementation: (1) The public authority ''adopts'' the crossing by agreement with the holder or through condemnation and the crossing is then included in the corridor-based risk-reduction program; (2) the crossing is closed; or (3) safety improvements are implemented that address increased risk at that crossing, as evaluated by the diagnostic team.

FRA does not believe it is necessary to specify a means of resolving any differences within the diagnostic team. In the event of disagreement, the contrasting views can be documented and included in the public authority's submission to FRA. If necessary, FRA will undertake additional fact finding before accepting or rejecting the proposed course of action. FRA expects public authorities to make these determinations in the first instance; FRA's role is to determine whether these authorities have considered the grade crossing safety issues set forth in the appendix and have stated an accurate and reasonable basis for their determinations.

This rule does not specify the financial responsibility of parties for safety improvements at private crossings. Responsibility will be determined under normal principles of property law and based upon whatever contracts and cooperative agreements may be entered into by the parties. At private crossings, the holder of the right to cross has normal common law obligations regarding the safe passage of employees and guests; and the community as a whole has an interest in a quiet environment. It is expected that the private crossing holder and the public authority would cooperate to effect any necessary improvements, with the railroad assuming practical responsibility for maintenance of any automated warning systems at the crossing. (Allocation of expense between the railroad and the crossing holder might be further influenced by any existing contractual arrangements between them.) In the case of a failure of parties to agree on new arrangements, the public authority might elect to adopt the roadway (using condemnation authority as necessary), in which case the crossing would be treated as public in nature.

Paragraph (c) of this section establishes that the private crossings within a quiet zone must at a minimum be equipped with crossbucks and ''STOP'' signs conforming to MUTCD standards together with advance warning signs in compliance with § 222.35(c).

Section 222.33 Can Locomotive Horns Be Silenced at an Individual Public Highway-Rail Grade Crossing Which Is Not Within a Quiet Zone?

This section addresses the situation in which locomotive horns need not be sounded even though the crossing is not part of a quiet zone. A railroad operating over an individual public highway-rail grade crossing may, at its discretion, cease the sounding of locomotive horns under certain conditions. Locomotive horns need not be sounded when the locomotive speed is 15 miles per hour or less and train crewmembers or properly equipped flaggers (as defined by 49 CFR 234.5) provide warning to motorists. These limited types of rail operations do not present a significant risk of loss of life or serious personal injury and thus, under the Act, may be exempted from the requirement to sound the locomotive horn. Locomotive horns will still be required to be sounded if automatic warning systems have malfunctioned and the crossing is being flagged pursuant to 49 CFR 234.105, 234.106, or 234.107. Horns will still be required in these limited circumstances in order to offset the temporary loss of the active warning which motorists have presumably come to rely on.

This section is an exception to the requirement that silencing of locomotive horns must include all crossings within a designated quiet zone. This section permits a railroad, on its own initiative, to silence its horns at individual crossings under certain circumstances in which the safety risk is low. FRA anticipates that this section will be used primarily at crossings located in industrial areas where substantial switching occurs, and thus would avoid unnecessary noise impacts on those railroad personnel working on the ground in very close proximity to the locomotive horn. This section also has the potential to reduce noise impacting residences and businesses near crossings where railroad switching

occurs. This section recognizes that under the noted conditions, public and railroad safety do not require the sounding of locomotive horns—a railroad is thus free to eliminate them. Since the primary beneficiary of this section is not nearby residences, the reasoning for the establishment of quiet zones rather than individual quiet crossings would not be applicable here. There is no additional burden placed on an engineer in this situation since the flagger will generally be a member of the train crew itself, and the engineer will not be placed in the position of having to determine when horns must be silenced or sounded as would be the case if horns could be silenced on an individual crossing basis. Additionally, prevention of noise spill-over from a crossing would not be a consideration in these situations.

FRA received a number of comments on the equivalent section in the NPRM (§ 222.31). The representative of Miami Springs, Florida felt that if train speed is less than 15 miles per hour, local authorities can decide if an exemption for the horn is appropriate. The representative did not think flaggers are needed in this situation. The AAR recommended that the decision to flag be left to railroads. In addition, this AAR representative pointed out that proposed § 222.31 identified the threshold speed of 15 miles per hour as the maximum authorized operating speed established by the railroad, not the actual operating speed. This commenter suggested that the maximum authorized speed is not the critical factor and recommended that the maximum speed identified in § 222.31 be revised to refer to actual operating speed. FRA agrees with this suggestion and has changed this provision accordingly. However, FRA will retain the requirement to flag the crossing in the absence of the horn. To do otherwise would put the traveling public at risk, in that the motorist could not be certain of the warning to be provided at the crossing. If a train passes through at 20 miles an hour, a horn would sound, but at 15 miles per hour a horn would not sound. Only if actual warning is provided by the horn at train speeds greater than 15 miles per hour and by a flagger at speeds of 15 miles per hour or less would the motorist consistently receive warning of the train's approach. The BLE provided the general comment that the assumption on which proposed § 221.31 is based, that slow moving trains or less frequent train movements lead to a diminished safety risk, must be carefully evaluated and must be supported by substantial relevant data. We agree, however, that is a less significant an issue in this case because flagging is required to provide an alternative methods of warning. Further, careful review of accident data shows that, even if the flagger's warning is not heeded, the likely severity of a collision will be much lower than at higher speeds.

Another railroad industry commenter, the Florida East Coast Railway Company, stated that it interpreted proposed § 222.31 as leaving it to the discretion of railroads to decide whether to sound the locomotive horn or not when the specified conditions are present. The commenter is correct that if all the conditions are met under this section, the railroad may, but is not required to forgo sounding the horn. The reason for leaving significant discretion with the railroad in this instance is that in many cases highly restricted sight distances and complex traffic patterns may complicate the flagger's job and make use of the horn virtually mandatory.

Section 222.35 What Are the Minimum Requirements for Quiet Zones?

This section details the minimum requirements for quiet zones established in conformity with this part. It addresses the minimum length of a quiet zone, minimum level of active warning to be provided, and minimum type of signage required.

The requirements of this section appeared in the NPRM in proposed § 222.33, ''Establishment of quiet zones.'' Because of the breadth of that proposed section, in this interim final rule, it has been broken down into smaller sections for ease of use and reference. Thus, this § 222.35 addresses minimum physical requirements, § 222.37 addresses who may establish a quiet zone, and § 222.39 addresses how a quiet zone is established.

In the NPRM, FRA discussed the rationale for requiring quiet zones rather than permitting a ban on locomotive horns on a crossing-by crossing basis. A quiet zone is defined in this rule as a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded. FRA believes that if locomotive horns are to be prohibited along a segment of track, the underlying purpose of the prohibition will not be served unless the prohibition is effective on a corridor basis. Without a quiet zone, the sounding of horns may be prohibited at one crossing, required at the next few crossings and then prohibited at another crossing perhaps one-quarter mile down the tracks. Because locomotive horns must be sounded in advance of the crossing, the horn being sounded at one crossing will effectively negate a large measure of the benefit of the prohibition elsewhere along the rail line. Imposition of a horn prohibition on a corridor basis will eliminate excessive and unnecessary workload demands on the engineer, permitting greater attention to other locomotive operating requirements. Without a zone prohibition, the engineer will be faced with the need to constantly be aware of which crossings are, or are not, subject to a prohibition.

Paragraph (a) addresses the length of quiet zones. Unlike the NPRM, which required an across the board one-half mile length irrespective of when the quiet zone was established, this Interim Final Rule provides for a minimum length for New Quiet Zones and permits Pre-Rule Quiet Zones to retain their length under specified conditions.

Paragraph (a)(1) provides that the minimum length of a New Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way. This is consistent with the NPRM, which as stated, required that all quiet zones to be at least one-half mile long. This provision did not generate a large number of comments; however, the concept of a minimum length was generally supported. The communities of Moorhead, Minnesota, Fargo, North Dakota, and Rocky River, Ohio supported the one-half mile length. New Jersey Department of Transportation pointed out that the purpose of a quiet zone and the requirement for minimum length may not be met throughout the entire length of a quiet zone ''because of stations, private grade crossings, curves and points where the locomotive horn would routinely be sounded regardless of its proximity to public grade crossings. * * * The definition and minimum length of a quiet zone * * * may need additional refinement regarding non-grade crossing safety points on the rail segment.'' While New Jersey DOT's points are well taken, it remains a local decision as to whether to implement a quiet zone. It is true that sounding of locomotive horns at stations and around curves would not be affected by this rule (although horn use at private crossings within quiet zones is regulated by this rule (*see* § 222.25)), but if a community determines that it wishes to reduce train noise even if it can not be totally eliminated, it may do so under this rule. The CPUC recommended that minimum length not be codified in the rule, but should be determined by the railroad and applicant and approved by the State agency. The Illinois Commerce

Commission agrees with the one-half mile length but argues that it should not be binding since shorter lengths may be appropriate. FRA believes that establishment of a minimum length of one-half mile is appropriate. It is, however, a local community decision as to whether to establish a quiet zone and it is the community which, after weighing the costs, can best determine where a quiet should be established. FRA understands that there may be situations in which a quiet zone must, for legitimate reasons, be shorter than one-half mile. In any such situation, the community may apply for a waiver from this requirement under the waiver provisions of § 222.15, showing special circumstances.

The Florida Department of Transportation recommended that FRA establish a minimum distance between quiet zones because without a specified distance between quiet zones, the actual separation may be as short as 50–100 feet. The agency claimed that the lack of a specified distance would violate the spirit of the one-half mile requirement. While a short distance between quiet zones may not be ideal in that the train horn may sound at a crossing within that distance, the horns will still be silenced within the minimum one-half mile length, which should provide relief to residents and businesses within that segment. FRA expects that there will indeed be situations in which a number of quiet zones are established in accordance with this section which will result in some crossings not included in quiet zones created on both sides of them. We anticipate that communities will calculate the Quiet Zone Risk Index for a number of different combinations of crossings in order to establish the right mix of crossings and anticipated costs. It is perfectly acceptable for a community to create two quiet zones (each at least one-half mile long) with a segment between them at which horns will sound. FRA believes that such a decision on the local level best reflects the needs and views of local residents and businesses. In such a situation FRA will not substitute its judgment for that of the local authorities.

Paragraph (a)(2) provides that the length of a Pre-Rule Quiet Zone may continue unchanged from that which existed as of October 9, 1996. FRA chose to exempt Pre-Rule Quiet Zones from the minimum one-half mile requirement in order to fairly take into consideration the interests of communities with existing whistle bans. While FRA does not believe there are many Pre-Rule Quiet Zones less than one-half mile in length, those that otherwise qualify to continue quiet zones under this rule may retain the original length of the quiet zone. This provision will prevent disruption in communities with established and effective whistle bans. FRA has determined that the addition of any crossing to a Pre-Rule Quiet Zone will end the grandfathered status of that quiet zone. Such additional crossing will change the status of a Pre-Rule Quiet Zone to a New Quiet Zone. To do otherwise would confer additional benefits to those communities with existing whistle bans not contemplated by the statutory directive to take into account *existing* restrictions on the sounding of the horn. Additionally, the Pre-Rule Quiet Zone has a safety record while horns did not sound, and presumably the ban had been continued because it met certain safety standards. There is no such safety record for the new crossing to be added to the quiet zone. Therefore, because new and additional risk is added by the new crossings added to the Pre-Rule Quiet Zone, risk needs to be calculated for the entire quiet zone. The resulting quiet zone must therefore comply with the requirements for New Quiet Zones and thus must be at least one-half mile in length.

Paragraph (a)(2) further states that the deletion of any crossing from a Pre-Rule Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone status. Of course, in addition to not qualifying for Pre-Rule Quiet Zone status, the resulting proposed quiet zone, if less than one-half mile, would also not qualify for New Quiet Zone status.

Paragraph (a)(3) makes clear that a quiet zone may extend beyond the boundaries of a political jurisdiction. This will permit the establishment of quiet zones reflective of the needs of the nearby residents and businesses rather than of artificial political boundaries. A quiet zone may thus extend for its full appropriate length, rather than being broken into two or three separate quiet zones. Of course, if more than one public authority is involved due to the fact that the quiet zone extends into more than one political jurisdiction, the different public authorities must agree to the establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take necessary actions under this rule. *See* § 222.34(a).

Paragraph (b) addresses the need for the presence of active grade crossing warning devices at crossings within quiet zones. Paragraph (b)(1) addresses active warning devices at crossings within New Quiet Zones. Each public highway-rail grade crossing in a New Quiet Zone must be equipped, no later than the implementation date of the New Quiet Zone, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing. Such devices must conform to the standards contained in the MUTCD issued by the Federal Highway Administration. As noted in the general discussion above, flashing lights and gates alone provide an unambiguous warning to the motorist of the arrival of the train. Removing the active warning provided by the train horn without providing flashing lights and gates would put the motorist in the position of relying exclusively on visual sighting of the train to make a decision, which is impractical under many circumstances (*e.g.*, permanently or temporarily obscured sight lines, compromised night vision, adverse weather and other factors that create visual clutter).

Such warning devices shall be equipped with power-out indicators. A power-out indicator is a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. Presence of such power-out indicator adds another level of protection at the crossing in that it helps the railroad know as soon as possible if electric power is out at the crossing. While all crossing warning systems are equipped with back-up battery power, it is essential that the railroad know as soon as possible if the system is operating on reserve battery power rather than commercial power in order to allow the railroad to take appropriate action before the battery fails. (Of course, because all grade crossing warning systems are designed on the ''fail-safe'' principle, if a warning system does lose all power, the gates will descend across the roadway. However, no additional visible warning is provided; and it is not uncommon for gates to be broken off by motor vehicles under such circumstances, leaving the crossing a potential trap for motorists subsequently seeking to cross.)

Paragraph (b)(2) addresses active warning devices at crossings within Pre-Rule Quiet Zones. Such quiet zones must retain the grade crossing safety warning devices which existed at the crossing as of the date of publication of this rule. Such warning systems may be upgraded, but in no event may the warning system be downgraded from that which was in existence as of this date. This provision is consistent with the statutory mandate that FRA take into

consideration the interest of communities which had existing horn restrictions in place. Permitting quiet zones with crossings not equipped with both flashing lights and gates, is appropriate since the safety history, and thus the risk level, is known at such crossings. For existing quiet zones, where the risk level without locomotive horns can be determined, the risk level, rather than the equipment level, will determine whether an existing quiet zone qualifies as a Pre-Rule Quiet Zone. While this approach may strike one as inconsistent with the approach of paragraph (b)(1), which requires both flashing lights and gates, the determining distinction is the lack of non-horn safety history at New Quiet Zones. In such circumstances, FRA is not willing to permit elimination of the train horn when active warning systems are absent. This distinction also further reflects the statutory mandate that this rule take into account the interest of communities with existing bans.

Paragraph (c) addresses the requirement for advance warning signs at crossings within a quiet zone. Paragraph (c)(1) requires that each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone or New Quiet Zone shall be equipped with an advance warning sign which advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD issued by the Federal Highway Administration. Paragraph (2) provides a period of three years from this date of publication for such signs to be installed at public and private crossings in a Pre-Rule Quiet Zone. This three-year interval tracks the period during which existing quiet zones may be continued without the necessity of a commitment by the public authority to continue the quiet zones as Pre-Rule Quiet Zones. Without this three-year exception, those communities with existing quiet zones with no advance warning signs would be forced to install such signs even if they were to discontinue the quiet zones within that three-year grace period. We note that, although we strongly encourage such signs wherever use of locomotive horns are prohibited, lack of signs is only being permitted for a short period of time, and only where they are not already in use.

Paragraph (d) requires that all private grade crossings within a quiet zone must be treated in accordance with this section and with § 222.25.

Section 222.37 Who May Establish a Quiet Zone?

This section addresses which entities may establish quiet zones. In the NPRM, FRA proposed that a local political jurisdiction, in addition to a State, have authority to establish a quiet zone. Additionally, in the preamble to the NPRM, FRA stated that ''FRA does not intend that the proposed rule confer authority on localities to establish quiet zones if State law does not otherwise permit such actions. Local political jurisdictions are creations of their respective states and their powers are thus limited by their individual State law or constitution.''

Understandably, this provision generated many comments from State and local governments. Of those States commenting, the consistent view was that States should have the primary role in establishing quiet zones and in administering a quiet zone program. Florida DOT strongly supported the view that a State agency should be the only governmental entity to designate or apply for quiet zone approval, comparing that process with the State agency's role in prioritizing grade crossing projects and administering Federal funds. Florida DOT suggested that there needs to be ''uniformity within a given State for the treatment applied to the crossings to permit quiet zones' and thus the only way to achieve this is for a State agency to be the only party to designate or apply to the FRA for a quiet zone. New Jersey DOT similarly felt that all designations and applications should come from a State agency which would provide more consistent and systematic approach within each State. The State also felt that having a single contact per State would lessen the burden on FRA. Washington DOT also felt that it is simpler to have one contact per State rather than have each community deal with the issue individually. California DOT echoed these views and added the suggestion that States should be free to provide more stringent protections above the Federal floor. The State recommended that references in the rule to ''state or local government'' should be replaced with ''State agency.'' Missouri's Division of Motor Carrier and Railroad Safety suggested that the State agency with regulatory authority over grade crossings should process quiet zone applications, thereby removing a burden on FRA. North Carolina Department of Transportation (NCDOT) suggested that each State DOT serve as a clearinghouse for quiet zone requests to FRA since these agencies have already been charged with evaluating public crossing safety and thus would be appropriately involved in safety evaluations for proposed quiet zones.

Comments from local governments tended to support the view that localities are in the best position to apply for quiet zones, however some communities favored State agency involvement. Brighton, Colorado expressed the view that local political subdivisions should establish quiet zones. Carrollton, Texas favors local government's role, as does Fort Collins, Colorado and Fargo, North Dakota. Chicago encourages ''FRA to allow state and local governments to agree to the most appropriate procedure for managing quiet zone implementation and maintenance.''

FRA notes that Congress, in mandating issuance of this rule, established the criteria and parameters under which the rule would be issued. Congress did not specifically provide a State role in managing the quiet zone program,[13] and FRA has not provided one either. Thus, despite suggestions to the contrary, FRA will not delegate to individual States any of its authority to manage this program. FRA did, however, solicit suggestions as to which is the appropriate party to establish quiet zones under the provisions of this rule. Commenters claiming that State oversight would provide consistency and only State agencies have the experience evaluating crossings from a safety standpoint are accurate to some extent. However, this rule has been crafted to provide a level of consistency while at the same time providing a range of options for quiet zone implementation. The ''consistency'' is found within the boundaries of this rule. Application of the same provisions throughout the State and nation will provide the needed level of consistency, without unduly preventing implementation of quiet zones under various situations. Similarly, reliance on a State agency's expertise in grade crossing safety will be helpful to public authorities in determining which among various alternatives should be followed, but this expertise should not determine which public body should make the ultimate decision. We encourage the use of diagnostic teams (such teams are required if specified categories of private crossings are proposed for inclusion in a quiet zone (*See* § 222.25)), but using diagnostic teams or others with safety expertise should not affect who the ultimate decision making authority should be. After reviewing public comments and testimony, and

[13] By contrast, see 49 U.S.C. 20105 and 49 CFR part 212 (State Safety Participation).

further review of § 20153, FRA has determined that the public entity with safety authority over the roadway that crosses the railroad is the appropriate public body to determine whether quiet zones should be established. As the authority over the roadway, that body is the logical entity to make such decisions. That authority, as the public entity responsible for safety and maintenance of the roadway (be it State, city, county or township), already has the legal authority over the roadway and therefore ostensibly has the necessary expertise or judgment to make decisions regarding that roadway. To the extent a State agency retains control over engineering decisions at highway-rail crossings, nothing in this rule should be read to compromise that authority. It is only the conditions under which the train horn will sound or be silenced that is reserved for resolution under this rule.

A review of section 20153 indicates a clear Congressional preference that decision-makers be the ''traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing.'' The statute refers to SSMs being provided by such body. Similarly, in the event a waiver from the regulation is desired, the statute requires that such application be from the traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing. The statute also requires that FRA take into account the interest of ''communities'' and that FRA ''work in partnership with affected communities to provide technical assistance and proved a reasonable amount of time for local communities to install SSMs.'' Nowhere does the statute refer to State agencies. The focus of the statute, and thus the focus of this rule is on the public bodies that are the ''traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing.'' Yet States do have an interest in this issue, and will of course play an important role as the discussion of paragraph (b) below details.

There are many different roadways crossing railroad tracks. Some are roads maintained by a small local jurisdiction, such as a town or village, and some are State highways maintained by the State. We do not expect, nor do we think it advisable, that a small political jurisdiction, such as a township desiring a quiet zone, have authority under this rule to determine what the State installs on its State highway within the borders of that town or village. Therefore, we have crafted this rule to provide that the political entity having safety jurisdiction over the highway have the authority to implement quiet zones involving those crossings.

FRA wishes to emphasize that it expects to participate in a broad cooperative effort involving States, local public authorities, and railroads that will identify the dimensions of potential quiet zones, staff diagnostic teams, identify funding sources, and help resolve any technical issues related to issues such as effectiveness rates for proposed ASMs. In this context, the strong participation of State departments of transportation and regulatory commissions will be crucial to project success, particularly since in many States the primary expertise for grade crossing safety issues resides at the State level.

FRA appreciates the offers made by several State-level departments and agencies to manage the implementation of this rule within their States. Although FRA does recognize that these agencies will need to play a strong role in implementation of the rule, FRA has not chosen to grant to State governments final approval functions for several reasons, any one of which is independently sufficient as a decisional criterion.

First, the obvious objective of the statute is to create a uniform and consistent pattern nationwide with respect to the conditions under which use of the train horn will and will not occur. It would be virtually impossible for FRA to ensure that a variety of State agencies were consistently applying the regulation; in fact, the burden of doing so could exceed the burden of administering the regulation directly. Congress did not direct that the States play any specific role in this regard.

Second, as a practical matter it is not clear that State agencies are authorized to take on this duty; and the delays inherently involved in obtaining this authority from legislatures could defeat the expectations of communities seeking to preserve or establish quiet zones.

Third, unlike many other situations where existing State programs are incorporated into a new Federal effort, this is not a field where State innovation has provided the model for Federal action. Although certain States have distinguished themselves in providing for safety at crossings by insisting on use of the train horn, and others have been responsive to local concerns by providing exceptions to its use, perhaps no more than one or two States has settled on an approach that appears to adequately balance the two interests and provide a foundation for a ready transition to functioning under this interim final rule.[14]

Paragraph (a) of this section provides that a public authority may establish quiet zones which are consistent with the provisions of this part. If a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part. We anticipate that many quiet zones will encompass roadways under the control of more than one political jurisdiction, thereby requiring cooperation among the various jurisdictions in order to establish a quiet zone. We recognize that under this scenario one jurisdiction could prevent the establishment of a quiet zone, but the alternative of one jurisdiction imposing its will on another in such decisions is unacceptable. If a multi-jurisdictional quiet zone is established, the various jurisdictions are free to make whatever arrangements are administratively helpful to those entities. The entities may, by agreement, delegate all decision-making and administrative actions, such as notifications and official contact with FRA, to one body. On the other hand, the entities may decide to act as a group, with each entity being involved in each activity throughout the application and implementation process. Thus, how, and to what extent the entities organize, is left up to the individual jurisdictions within the proposed quiet zone.

Paragraph (b) of this section provides that a public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. It is unlikely that a State would attempt to restrict a community's freedom to create a quiet zone after issuance of this rule. However, were a State to impose such a restriction and be upheld in doing so, the other provisions of this rule would be left intact. This would mean that the mandate of § 222.21 would go into

[14] This is not a criticism, but merely an observation. Until the studies undertaken by FRA beginning in the 1990s, there was insufficient data available to anyone to fairly evaluate the actual impact of silencing the train horn. By the same token, supplementary and alternative safety measures emerged as a credible alternative to the train horn only as a result of innovation and research that flowered in the 1990s as a result of broad partnerships at the State and Federal levels, with strong participation by passenger and freight railroads.

effect, but the community's authority to create an exemption to that mandate would not. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

This section (along with § 222.5 ''Preemption'') makes clear that State laws covering the subject of locomotive horn use at public highway-rail grade crossing are preempted by this rule and thus are of no effect. State laws which establish minimum distances in advance of a public crossing at which locomotive horns must be sounded are thus preempted. Also preempted by this rule are State laws which establish criteria for the prohibition of horn use at public crossings, as are State laws which prohibit the creation of whistle ban crossings or quiet zones. This paragraph also makes clear that the rule does not affect the traditional role of State agencies, or the Federal Highway Administration, in their role of funding and constructing grade crossing safety projects, the selection of traffic control devices, or engineering standards for roadways or traffic control devices.

Paragraph (c) of this section makes clear that State agencies may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA, however, any public authority eligible to establish a quiet zone under this part may do so.

Section 222.39 How Is a Quiet Zone Established?

This section addresses the manner in which a New Quiet Zone is established. FRA chose to use a quiet zone as a basis for this rule. While it would be possible to approve a locomotive horn ban on a crossing-by-crossing basis, the desired result of less disruption to the surrounding community by locomotive horn noise would be minimal. Because a locomotive horn must be sounded in advance of a grade crossing, the noise spill-over from a crossing not subject to a ban could still disrupt the residents and businesses near a crossing where horns are banned. As a result, the concept of a quiet zone was developed, which is meant to fulfill the following purposes: ensure that banning of locomotive horns would have the greatest impact in terms of noise reduction; ease the added burden on locomotive crews of the necessity of determining on a crossing-by-crossing basis whether or not to sound the horn; and enable grade crossing safety initiatives to be focused on specific areas within the quiet zone.

In the NPRM, FRA proposed two different methods of establishing quiet zones, depending on local circumstances. In one method (set forth in proposed § 222.33(a)), every public grade crossing within the proposed quiet zone would have an SSM applied to the crossing and the governmental entity establishing the quiet zone would only need to designate perimeters of the quiet zone, install the SSMs, and comply with various notice and information requirements set forth in the rule. The second proposed method (set forth in § 222.33(b)) would provide a governmental entity greater flexibility in using SSMs or ASMs to address problem crossings. The second method would allow FRA to consider a quiet zone that does not have a supplemental safety measure at every crossing as long as implementation of the proposed SSMs and ASMs in the quiet zone as a whole would cause a reduction in risk to compensate for the lack of locomotive horn. Because the success of ASMs in compensating for the lack of the locomotive horn is dependent on the level of time and effort expended by the governmental entity, and because estimates of effectiveness for ASMs will entail a degree of judgment, FRA retained a review and approval function where the governmental entity proposed less than using SSMs at every crossing.

Regardless of the method used, the proposed rule contemplated that both State and local governments would have authority to establish quiet zones. Some State commenters recommended that authority to establish quiet zones should be limited to State agencies, and thus recommended that FRA revise the language of § 222.33 to remove all references to local governments. The CPUC recommended that State agencies retain the primary authority for review and approval of quiet zones. The North Carolina Department of Transportation (NCDOT) similarly expressed the view that it is essential that State transportation agencies serve as clearinghouses for quiet zone designations and applications to FRA since these agencies are the administrators of the Section 130 Federal safety program. The NCDOT further recommended that the criteria for establishment of quiet zones should strongly encourage States to perform Traffic Separation Studies in order to identify additional safety devices that may be required at particular crossings. The NCDOT also recommended that FRA, along with registered Professional Engineers, review the underlying diagnostic process undertaken by the requesting agency when reviewing applications to establish quiet zones.

The Oregon DOT expressed the belief that the establishment of quiet zones should require more than just installing FRA pre-approved SSMs as articulated in § 222.33(a). The Oregon DOT suggested that some sort of safety review should be required before quiet zones are designated. The CPUC similarly agreed that States should review each crossing proposed for inclusion in a quiet zone under proposed § 222.33(a), even if FRA requires no further review. The New Jersey DOT suggested that any rule providing for quiet zones needs to address other non-highway-rail crossings in areas near railroad stations, curves, or at other points along rail lines where views may be obscured and the locomotive horn would normally be sounded. While FRA does not require a diagnostic team to review a proposed quiet zone (with the exception of reviewing improvements to private crossings), we anticipate that in most instances, such a team will be utilized. FRA is not requiring such a review because, in the case of SSMs, such measures have already been found to be effective in compensating for the lack of a horn. FRA believes that a public authority will use the best talent available to determine the appropriate manner of establishing a quiet zone.

Railroad industry commenters voiced strong disagreement with the proposed rule in that it does not provide for railroad participation in the process of establishing quiet zones. Specifically, the American Short Line and Regional Railroad Association (ASLRRA) and the Florida East Coast Railway Company (FEC) emphasized that including railroads in the process of establishing quiet zones is a logical and practical necessity. Both ASLRRA and FEC insisted that railroads must have the right to review and respond to any request for a quiet zone that may affect the railroads' operations. In support of its position, FEC cited its previous experience with whistle bans established in Florida that led to numerous lawsuits against the company. FRA notes that Florida's whistle ban law, which led to imposition of FRA Emergency Order No. 15, only required that crossings subject to the ban be equipped with gates and flashing lights—it did not provide for the extensive set of safeguards which are the subject of this rule. As discussed earlier, collisions increased dramatically during the whistle ban period, which naturally resulted in increased lawsuits.

This rule is crafted specifically to avoid such increased risk at subject crossings. One local government commenter, however, expressed concern over the potential inclusion of railroads in the process of establishing quiet zones. This commenter emphasized the necessity of communities being able to take unilateral action to implement quiet zones.

FRA appreciates the role that railroads must play in establishing quiet zones, from possible installation of four-quadrant gates to providing information for the National Grade Crossing Inventory. We also anticipate that, with or without use of diagnostic teams, railroads will play an integral role with public authorities in designing the most effective and most cost effective quiet zones. Despite the clear need for railroad involvement, FRA does not intend that railroads have a veto power over the establishment of quiet zones. The decision to establish such zones resides with the public authority. Once a public authority establishes a quiet zone under the terms of this rule, the railroad is legally prohibited from routinely sounding the locomotive horn at crossings within the quiet zone. As discussed earlier, such prohibition preempts local ordinances and State laws regarding sounding of locomotive horns at public crossings and private crossings within quiet zones. We expect court decisions will reflect that reality and will not hold the railroad liable based on a cause of action of failure to sound a locomotive horn. Please *see also* § 222.7 ''What is this regulations's effect on State and local laws and ordinances?'' and § 222.23 ''How does this regulation affect sounding of a horn during any emergency or other situation?''

Other railroad industry commenters agreed with State commenters as to the necessity of either limiting the authority to establish quiet zones to State agencies, or at least mandating the inclusion of State agencies in the process. The AAR voiced support for the position of CPUC that only States should have the authority to establish quiet zones. The BLE, on the other hand, felt that the language of § 222.33 giving State and local governments the authority to establish quiet zones was appropriate, but that the relevant State governmental agency should always be included in the process in order to provide a consistent and efficient approach. FRA continues to believe the best approach, and the approach consistent with the statutory mandate, requires that public authorities with safety authority over the roads and highways within a quiet zone make the ultimate decision as to establishment of quiet zones. FRA anticipates that public authorities will work closely with State agencies with expertise in the area and with State funding agencies, but, as in a public authority's relationship with a railroad, the ultimate decision must be left to the public authority.

In additional comments from railroad industry participants, the BRS voiced general support for the two methods of establishing quiet zones in proposed § 222.33, but a representative of the Wisconsin Central System expressed concern about FRA's ability to analyze and process quiet zone petitions in a timely manner. In comments specifically relevant to passenger operations, the National Railroad Passenger Corporation (Amtrak) expressed concern about the exposure of train passengers to the dangers of accidents at highway-rail grade crossings. Amtrak suggested that communities seeking to establish quiet zones should be required to provide for the re-routing of heavy commercial motor vehicles away from crossings that appear to have dangerous characteristics or that have a history of violations or accidents. Amtrak also suggested that diagnostic teams reviewing crossings for potential inclusion in quiet zones should focus on heavy truck traffic because such vehicles pose the greatest risk of accidents. FRA appreciates Amtrak's concerns, however, quiet zones will only be established under this rule where there is compensation for the lack of a locomotive horn. Specifically, the requirement that flashing lights and gates be provided at each crossing in a New Quiet Zone, together with other requirements of the rule, should limit any possibility that this rule will adversely affect safety on Amtrak routes. (In fact, the exposure provided to innovative safety measures during this rulemaking and prior public outreach has already had a beneficial effect on emerging corridors.) However, FRA does recognize the possibility that passenger risk may be susceptible to special analysis as this rule is revised in future years based on the results of research.

In this rule, FRA has retained the basic framework as proposed in the NPRM, but has modified it in response to the many comments pertaining to the perceived inflexibility of the proposal. The NPRM was crafted in order to provide flexibility to the local communities. As stated in the NPRM at page 2246, ''In this more flexible approach, risk will be viewed in terms of the quiet zone as a whole, rather than at each individual grade crossing. Thus, FRA would consider a quiet zone under this approach that does not have a supplemental safety measure at every crossing as long as implementation of the proposed SSMs and ASMs on [sic] the quiet zone as a whole will cause a reduction in risk to compensate for the lack of a locomotive horn. If the aggregate reduction in predicted collision risk for the quiet zone as a whole is sufficient to compensate fore the lack of a horn, a quiet zone may be established.''

This interim final rule continues the concept of viewing risk on a corridor-wide basis, however the rule includes measurements of risk that reflect commenters' suggestions that FRA should give greater weight to the safety history and circumstances locally. Thus, FRA will permit quiet zones where risk has been addressed in one of three ways: one is the reduction of risk by compensating for the lack of the locomotive horn by implementation of SSMs at every crossing within a quiet zone; second, by reducing the risk level within the quiet zone to a level at least equal to the average risk level nationwide at crossings equipped with flashing lights and gates and at which horns are sounded; or third, by implementation of safety measures that will cause the risk level within the quiet zone to fall to or below the risk level which would exist if locomotive horns sounded at all crossings within the quiet zone.

Paragraph (a)—Public Authority Designation

Paragraph (a) of this section addresses the situations in which the public authority may designate a quiet zone without the need for formal application to, or approval by, FRA. Paragraph (a)(1), which is similar to proposed § 222.33(a), provides that a quiet zone may be established by implementing at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in Appendix A. Because each of those SSMs have been determined to have an effectiveness rate which is at least equivalent to that of a locomotive horn, and there is an SSM at every public crossing, FRA can be assured that there is compensation for the lack of a locomotive horn in the quiet zone. FRA's role in this situation is thus minimal. The public authority would only need to designate the extent of the quiet zone and comply with the information and notice requirements of § 222.43.

Paragraph (a)(2) permits quiet zones if the risk level is, or can be made to be, no higher than a national standard of risk where train horns are used. The section compares the risk level at

crossings within the quite zone to the average risk level on a nationwide basis at crossings equipped with flashing lights and gates, and at which locomotive horns are sounded. Thus, if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, the risk at crossings within the quiet zone would be at least equal to the risk level at the average crossing where horns are sounded. Paragraph (a)(2)(i) provides that a quiet zone may be established if the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold. If so, there is no need to implement SSMs.

Paragraph (a)(2)(ii) provides that a quiet zone can be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold. Under this provision, there is no requirement to implement SSMs at every public crossing within the quiet zone. The public authority has discretion both as to which crossing or crossings will be equipped with an SSM and which type of SSM to use. FRA will provide the basic calculations to the public authority. Such information will be available on FRA's Web site at *http://www.fra.dot.gov.* Additionally, software and technical assistance will be available from FRA's Regional Grade Crossing Managers. The general idea behind paragraph (a)(2) and the Nationwide Significant Risk Threshold is that communities desiring quiet zones should not be required to achieve a higher degree of safety than the average level of risk at public crossings with lights and gates where the horn is sounded. This can relieve some communities of the need to make expensive improvements to eliminate risk below the significant level.

Paragraph (a)(3) provides an additional manner of establishing quiet zones by designation. A public authority may implement SSMs which reduce the Quiet Zone Risk Index to a level at or below the risk level which would exist if locomotives horns sounded at all public crossings within the quiet zone. This permits quiet zones to exist even if the level of risk will be above the national average for train horn crossings as long as measures are taken to ensure risk in the quiet zone does not increase when the horn is silenced. The quiet zone is viewed in the aggregate to determine if there has been compensation for the lack of the locomotive horn.

It is important to note that under any of the alternatives within this section any additional safety measures must be SSMs as listed in Appendix A. Because of this, FRA does not need to review the proposal. The safety measures have already been reviewed individually by FRA in determining their effectiveness rates and the risk levels have been also been determined in accord with the Appendix D, ''Determining Risk Levels.''.

Paragraph (b)—Public Authority Application to FRA

Paragraph (b) addresses the circumstances in which a quiet zone may be established after application to, and approval by, FRA. This paragraph is intended to provide greater flexibility to the public authority to use ASMs, ASMs and SSMs at different crossings, and variations of SSMs, such as a median shorter than is required when it is used as an SSM. (An ''SSM'' which does not fully comply with the requirements of Appendix A is considered to be an ASM.) This paragraph is based on proposed § 222.33(b). As in the proposal, not every public crossing within a quiet zone necessarily needs to be treated with an SSM or ASM. However, sufficient data must be submitted to the Associate Administrator to demonstrate that implementation of the measures will cause a reduction in the Quiet Zone Risk Index to, or below either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below the Nationwide Significant Risk Threshold.

Paragraph (b)(1) provides that a public authority may apply to the Associate Administrator for approval of a quiet zone that does not meet the standards for public authority designation under paragraph (a). The application must contain a proposal to implement one or more SSMs or ASMs and must contain sufficient detail concerning the present and proposed safety measures at the public and private crossings within the proposed quiet zone. The paragraph also requires that the membership and recommendations of a diagnostic team, if used, must be included in the application. FRA is requiring that a diagnostic team be used only when private grade crossings are to be included in a quiet zone, although their use elsewhere is highly recommended. The public authority must also commit to implement the proposed safety measures and demonstrate through data and analysis that implementation of these measures will reduce the Quite Zone Risk Index to, or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below the Nationwide Significant Risk Threshold.

Paragraph (b)(2) addresses approval by the Associate Administrator. If, in the Associate Administrator's judgment, the public authority is in compliance with paragraph (b)(1) and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index which is at or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone, or is at, or below, the Nationwide Significant Risk Threshold, the quiet zone will be approved. Because of the greater flexibility and the greater variation in possible risk reduction, FRA's role is much greater than when a public authority designates a quiet zone; thus, the Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. The Associate Administrator may also not approve the quiet zone, in which case the reasoning behind the rejection will be provided to the public authority. § 222.57. A decision disapproving a request for approval may be challenged by filing a petition for reconsideration with the Associate Administrator. The petitioner will have the opportunity for an informal hearing.

Proposed § 222.33(c) and Proposed Appendix C—Quiet Zones in Which SSMs or ASMs Are Not Necessary

Proposed § 222.33(c) addressed the limited circumstances in which a quiet zone could be established without the need for SSMs or ASMs. The limited conditions under which such a quiet zone could be established were proposed in Appendix C of the NPRM. FRA proposed five criteria that must be met for a quiet zone to be established under § 222.339(c): (1) Train speed does not exceed 15 miles per hour; (2) trains travel between traffic lanes of a public street or on an essentially parallel course within 30 feet of the street; (3) signs are posted at every grade crossing indicating that locomotive horns do not sound; (4) unless the railroad is actually situated on the surface of the public street, traffic on all crossing streets is controlled by STOP signs or traffic lights which are interconnected with automatic crossing warning devices; and (5) the locomotive bell is rung when approaching and traveling through the crossing.

The Oregon Department of Transportation expressed strong disagreement with FRA's inclusion in proposed Appendix C of slow moving trains running within a street right-of-

way. The Oregon DOT claimed that although crossings where slow moving trains run within a street right-of-way could qualify for a quiet zone, such situations should not be globally exempt from the requirement to sound the locomotive horn. The Town of Andover, Massachusetts, recommended that the Appendix C criteria be expanded to take into account the volume of traffic at a crossing and historical accident data and safety measures in place at the crossing. Recognizing that Appendix C as written would require that all five of the listed conditions be present in order to establish a quiet zone, another local government commenter, Jefferson Parish, Louisiana, suggested a more flexible approach to identifying situations which should qualify as quiet zones without any additional safety measures. Specifically, Jefferson Parish explained that many residential areas are located directly adjacent to railroad rights-of-way, with no intervening public streets. Thus, even if crossings in these areas meet all of the conditions listed in Appendix C except for close proximity to a public street, these areas would never be able to qualify as quiet zones. Jefferson Parish therefore suggested that either some flexibility be allowed on the criterion pertaining to the distance of the track from a parallel street, or to require that areas meet some percentage of the criteria (*e.g.*, four out of five) listed in Appendix C in order to be designated a quiet zone with no additional safety measures necessary.

The Northern Indiana Commuter Transportation District recommends a new categorical exclusion for an intersection of two streets, one of which has railroad tracks, a highway speed limit of 25 miles per hour and railroad speed limit of 15 with passive warnings. In support of this exclusion, the Transportation District cited 17 ''non-serious'' accidents at its crossings during a recent eight year period. Given the limited information regarding this type of operation, it would not be appropriate to provide a categorical exclusion.

One commenter testifying at the Salem, Massachusetts, public hearing, expressed the view that the Appendix should be eliminated in its entirety. This commenter, a locomotive engineer, explained that while some situations may exist which require no safety measures to offset the lack of use of the locomotive horn, such situations are rare and should be dealt with on an individual case-by-case basis after local public hearings. This commenter also expressed concern regarding the inclusion of crossings where the railroad and a highway run parallel to each other with only a small distance separating the two. This commenter explained that even if a train is operating at slow speed, it is very difficult for a motorist driving parallel and close to the track to see a train coming up from behind when the motorist is at an intersection and about to turn and cross the track.

Several commenters, unable to determine whether specific crossings in their communities would meet the requirements of Appendix C, requested clarification of the listed criteria. Specifically, some commenters were unclear as to whether all five of the conditions must be present together or if the requirements must only be met individually. In addition, one local government commenter specifically requested clarification of the requirement that trains be traveling between or parallel to traffic lanes of a public street, and what was meant by the phrase ''railroad is actually situated on the surface of a public street.''

One commenter, representing the City of Saint Paul, Minnesota, expressed support for the inclusion of train speed as a factor in Appendix C. The City of Saint Paul expressed the opinion that as compared to fast moving trains, slow moving trains greatly reduce the safety risk involved with train-auto collisions. However, this commenter also noted that because slow moving trains take a longer time to travel through the same amount of track as fast moving trains, slow moving trains lead to greater noise disturbances if required to sound their horns at every crossing.

Other commenters indicated that the NPRM's Appendix C required revision or that the Appendix should be eliminated altogether. One commenter speaking at the Salem, Massachusetts, public hearing suggested that the criteria listed in Appendix C do not address safety. Instead, this commenter suggested that the listed criteria address a certain pattern of railroad and roadway coexistence, which pattern is not exclusive of other safe conditions. This commenter suggested that in lieu of the proposed Appendix C, FRA should adopt performance based criteria which do not exempt single crossings, but instead exempt collections of crossings within an area that already have a demonstrated safety record. FRA notes that essentially performance based criteria have in fact been adopted in response to public comments.

The proposed language addressed a very specific, limited, situation which, in FRA's judgment, was of inherently low risk. It was FRA's judgment that such low risk crossings need not be required to have SSMs or ASMs in order to silence the horn. Providing this exception to the proposed rule was appropriate given the structure of the NPRM. However, because the actions required of public authorities in creating quiet zones under this interim final rule are based to a much greater extent on risk at those crossings, there is no longer a need to retain this proposed provision. Communities which would have likely qualified under the proposed section will likely qualify for a quiet zone pursuant to § 222.39(a) (public authority designation) by being below the NSRT and thus will not need to apply SSMs or ASMs to retain a quiet zone. If a quiet zone meeting the conditions of the proposed section does not qualify under § 222.39(a), it is likely that certain conditions are present which add to the risk level. In such unlikely circumstance, an SSM or ASM might be appropriate, or the public authority may wish to apply for a waiver.

Based on the above, and the comments calling into question its provisions, FRA is deleting proposed Appendix C and is not carrying forward to this interim final rule language of proposed § 222.33(c).

Section 222.41 How Does This Rule Affect Pre-Rule Quiet Zones?

This section addresses the effect of this rule on Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is a segment of a rail line within which is situated one, or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on the date this rule was published.

In the NPRM, FRA proposed to provide communities with pre-existing whistle bans with a three-year grace period for compliance with the final rule. To take advantage of this three-year grace period, the NPRM would require that these communities initiate or increase highway-rail grade crossing safety public awareness initiatives and grade crossing traffic law enforcement programs within two years after the date of issuance of the final rule if no quiet zone was yet designated or accepted for its jurisdiction in accordance with the rule.

FRA received numerous comments regarding its proposal from State and local governments, as well as representatives of the railroad industry.

Most local governments commented that the three-year grace period was insufficient, citing lack of adequate funding and the costs involved with installing the approved SSMs. Most local governments felt that it would take 5–10 years to arrange funding and actually install the approved SSMs. One Illinois municipality suggested that even with adequate funding, bringing the State's quiet zones into compliance with the rule could take up to 15 years.

On the other hand, the Washington Department of Transportation suggested that a three-year grace period is too long and indicated that communities with existing quiet zones should be able to comply with the rule within one year of the issuance of the final rule. Several railroad industry commenters also suggested that the three-year grace period for communities with pre-existing whistle bans is excessive. The United Transportation Union suggested a six-month grace period, while the BRS recommended two years as an appropriate period.

Most State commenters emphasized the importance of grandfathering existing quiet zones where substantial investment has already been made by State transportation agencies, railroads, and affected communities. The Illinois Commerce Commission suggested that all crossings in communities with pre-existing whistle bans be grandfathered under the rule until the responsible State oversight agency establishes a recognized quiet zone for the area. Likewise, the Oregon DOT noted that requiring a community with a pre-existing whistle ban to initiate or increase both highway-rail grade crossing safety public awareness initiatives and crossing traffic law enforcement programs, if no quiet zone is designated or accepted under the final rule within two years, imposes a new financial burden on the community. In particular, the Oregon DOT questioned the efficacy of this requirement in situations where a community has had a whistle ban in place for several years with no reported accident history that would be impacted by the additional initiatives or enforcement.

In its comments, the BLE recognized the past efforts and investments of communities regarding the issue of locomotive horn noise. However, citing concerns that crossings in localities with pre-existing quiet zones which are grandfathered from the requirements of the final rule could continue to exist without appropriate safety measures, the BLE requested that the final rule explicitly state that the provisions for termination of quiet zones set forth in § 222.39(d) apply to crossings with pre-existing quiet zones.

The AAR was the only commenter to specifically oppose the blanket grandfathering of pre-existing quiet zones for any period of time. Specifically, the AAR recommended that FRA examine the crossings within these pre-existing quiet zones to ensure that additional safety measures are not needed. The AAR suggested a number of specific prerequisites to the granting of quiet-zone status to communities where locomotive horns have not historically been sounded. First, the AAR suggested that all public crossings within pre-existing quiet-zones be equipped with gates and lights, and signs warning of the existence of the quiet zone should be placed at the approach to each crossing. Second, the AAR recommended that notices of quiet zone implementation or termination be published in the **Federal Register**. Third, reasoning that the ability of a local community to institute a quiet zone has historically been dependent on approval of the State, the AAR recommended that only States be permitted to apply for quiet zone status. Next, the AAR recommended that States have the burden of demonstrating the safety of grade crossings, and diagnostic teams should be used to analyze crossing issues before any quiet zone is instituted. Finally, the AAR recommended that only crossings where locomotive horns have not sounded for the previous five years should be eligible for grandfathered status.

In comments specifically relevant to railroad operations and highway-rail grade crossings within the State of Florida, the Florida East Coast Railway Company (''FEC'') noted that the NPRM does not address the pre-existing restrictions on the sounding of locomotive horns that were preempted by Emergency Order No. 15 in 1991 which required FEC to sound warning devices at grade crossings and required that FEC revoke operating rules and bulletins to the contrary. In its comments, FEC explained that it considers all local ordinances preempted by Emergency Order No. 15 null and void and understands that for purposes of the final rule, the subject crossings will not be viewed as being within pre-existing quiet zones. FEC, however, requested that FRA specifically address the status of the affected crossings in the final rule so as to avoid any confusion among affected jurisdictions. The status of such affected crossings is in fact addressed in this rule. Florida crossings subject to Emergency Order No. 15 do not fall within the definition of Pre-Rule Quite Zones inasmuch as Florida State statutes and local ordinances permitting whistle bans were not enforced or observed as of October 9, 1996, having been preempted by the Emergency Order in 1991. Therefore, any quiet zones to be established in Florida would need to qualify as New Quiet Zones under this rule.

FRA recognizes the strong feelings associated with the issues raised by this provision. As noted, some commenters recommended a longer grandfathering period while others recommended substantially shorter periods. FRA, after considering the comments, and reviewing the statutory mandate that FRA take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings, has determined that extension of the grandfathering period is appropriate. FRA has also considered that budgetary cycles and funding planning may require more time than was proposed in the NPRM. As discussed further below, the grandfathering period will extend from three to eight years from the publication date of this rule in the **Federal Register**. The determining factor as to how long within that period a community has will depend on the actions taken by that community and the appropriate State agency. FRA agrees with Oregon DOT and has crafted the rule in such a manner that the public authority does not need to expend construction or program funds (other than for planning and application purposes) until it has determined, and has had approved when necessary, the actions to be taken. FRA has also provided for State involvement to the extent that if a public authority wishes to take advantage of the entire eight-year grandfathered period, the plans of the public authority must be part of a State-wide implementation plan. Thus, the appropriate State agency will be involved in working with public authorities in resolving planning and funding issues.

Paragraph (a) of § 222.41 addresses Pre-Rule Quiet Zones which qualify for automatic approval. A Pre-Rule Quiet Zone will be considered to be automatically approved if (in addition to compliance with §§ 222.35 and 222.43) the quiet zone is in compliance with one of a number of conditions. The quiet zone may remain in effect if there are SSMs at every public highway-rail grade crossing within the quiet zone (paragraph (a)(1)). Similarly, the quiet zone may continue automatically if the Quiet Zone Risk Index as last published by FRA is at, or below, the Nationwide

Significant Risk Threshold (paragraph (a)(2)). FRA has added this provision in recognition of the many comments that emphasized the need for FRA to look at the safety record at individual crossings and quiet zones rather than impose a standard that required SSMs regardless of an extremely good safety record. Comparing the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold does in fact address safety history at crossings within the quiet zone because the accident history is one component of the Quiet Zone Risk Index. That is why this provision applies to both New Quiet Zones and Pre-Rule Quiet Zones.

While the preceding conditions permitting continuation of a quiet zone essentially track the provisions for automatic approval for New Quiet Zones, paragraph (a)(3) is unique to Pre-Rule Quiet Zones. A quiet zone may be continued automatically if the Quiet Zone Risk Index as last published by FRA is above the Nationwide Significant Risk Threshold but is less than twice the Nationwide Significant Risk Threshold *and* there have been no relevant collisions at any public grade crossing within the quiet zone for the five years preceding the date of publication of this rule.

This provision goes a step further in recognizing situations where train horn bans have been in place for a considerable period with no untoward effects. We accommodate such impressive facts by giving the accident history greater weight than that the overall risk index. In determining the risk level resulting from silencing horns in New Quiet Zones, FRA can only project the safety implications from silencing the horn—by definition there is no empirical evidence at those crossings of the safety implications of silencing the horn. On the other hand, Pre-Rule Quiet Zones present direct empirical evidence of the safety effect of silencing the horn at those crossings within the quiet zone. Thus, FRA includes paragraph (a)(3) in recognition that, although statistically the quiet zone may present a higher safety risk (Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold) due to risk factors such as traffic volume, experience shows that, for whatever reason, the lack of a locomotive horn at those crossings has not resulted in appreciably unsafe conditions. (Of course, the occurrence of an accident will eliminate this special exception.) Paragraph (b) addresses those Pre-Rule Quiet Zones which do not qualify for automatic approval under paragraph (a). Paragraph (b)(1) provides that a public authority may decide to continue Pre-Rule Quiet Zones on an interim basis under the provisions of this paragraph. It is important, however, to note that this paragraph only provides interim authority to continue a quiet zone. Continuation of a quiet zone beyond the periods specified in this paragraph will require implementation of SSMs or ASMs as though the quiet zone is a New Quiet Zone (in accord with § 222.39 (''How is a quiet zone established?'')).

Paragraph (b)(2) provides that a public authority may continue a quiet zone for five years from the date of publication of this rule. This period will ensure that the public authority has adequate time for planning and implementation of SSMs or ASMs. The five-year extension period is dependent on the public authority filing with the Associate Administrator a detailed plan for establishing a quiet zone under this part. If the quiet zone will require approval under § 222.39(b), the plan must include all the required elements of filings under that paragraph together with a timetable for implementation of safety improvements. The plan must be filed within three years of the date of publication of this rule. FRA understands that, in some cases, plans filed within this period will be contingent on funding arrangements that may not be complete as of that date (particularly where State-level participation has been requested). FRA is seeking a good faith filing, which normally would be tendered by the executive head of the relevant public authority or authorities involved.

Thus, the practical implication of this timetable is that a Pre-Rule Quiet Zone may continue for three years from the date of publication of this rule without any action taken by the public authority. However, at the expiration of that three-year period locomotive horns will resume sounding at all public crossings within the former quiet zone unless the public authority has filed a plan for completing the necessary improvements. Thereafter, if the public authority wishes to establish a quiet zone, it will need to comply with the requirements for New Quiet Zones contained in this rule.

Paragraph (b)(3) provides that if certain conditions are met, locomotive horn restrictions may continue for three years beyond the five-year period permitted in paragraph (b)(2). Before the expiration of three years after publication, the appropriate State agency must provide to the Associate Administrator a comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones which do not qualify for automatic approval. The improvements must, when implemented, enable the Pre-Rule Quiet Zones to qualify for a quiet zone under this rule. Before the expiration of four years after publication, physical improvements must be initiated at least one of the crossings within the quiet zone, or the State agency must have participated in quiet zone improvements in one or more jurisdictions elsewhere in the State.

In summation, paragraph (b)(2) permits a quiet zone to be extended for three years without any action taken by the public authority. If, however, the public authority files a detailed plan for implementation of SSMs or ASMs within that three-year period, the quiet zone will be extended to five years to permit implementation of those plans. Paragraph (b)(3) permits a quiet zone to be extended for an additional three years (for a total of eight years) if the State files a comprehensive State-wide implementation plan and funding commitment within three years of publication of this rule, and if, within four years of publication, improvements are made to a crossing within the quiet zone, or to another crossing in another quiet zone elsewhere in the State.

Paragraph (4) merely recommends that if the improvements planned by the public authority require FRA approval under § 222.39(b), application for approval should be filed no later than thirty months after publication of this rule. This will provide sufficient time for FRA to review the proposal prior to the end of the three-year extension period.

Section 222.43 What Notices and Other Information Are Required To Establish a New Quiet Zone or To Continue a Pre-Rule Quiet Zone?

This section governs the type and timing of notification and information that must be provided to various parties. The intent of this section is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones and, if necessary, of their termination. This section also details the information that must be provided to FRA. FRA received a small number of comments regarding the notice and information requirements of the proposed rule. Although most commenters acknowledged the necessity of notification procedures ensuring that all interested parties are aware of the existence of quiet zones, a few commenters suggested that the specific notice and information requirements of the proposed rule would be administratively burdensome and impractical. First, the BLE

expressed the opinion that a 14-day period between designation or FRA approval of a quiet zone and actual implementation is insufficient. The BLE recommended that this provision be modified to provide that a railroad has an affirmative duty to notify each employee of the establishment of a quiet zone via the railroad's usual means of communication with its employees. FRA agrees with the BLE that 14 days may not be sufficient and has therefore lengthened the 14 day period to 21 days. However, despite the BLE's request for a regulatory requirement that railroads notify their employees of the establishment of a quiet zone, FRA is confident that railroads will indeed so notify their employees without the necessity of such a requirement, if for no other reason, than the railroad would be in violation of this regulation if horns were to routinely sound within quiet zone limits.

Other commenters explained that because FRA accepts updates to the AAR Inventory only from States and railroads, the requirement for designating entities to submit the Inventory Forms is impractical. The Oregon Department of Transportation (''DOT'') explained that the State does not have the staff or resources to update the Inventory as the proposed rule would require. The Oregon DOT also questioned whether railroads would be willing to expend their resources to update the Inventory as proposed. The City of Fargo, North Dakota, and the City of Moorhead, Minnesota, echoed the Oregon DOT's concern in this regard and suggested three alternatives: (1) That communities be allowed to update the Inventory for crossings within quiet zones, (2) that railroads be required to update the Inventory when installing the safety measures necessary to implement the quiet zone, or (3) that FRA incorporate the information contained in the quiet zone notification into the Inventory. FRA is aware of the problem associated with updating the Inventory. However, an up-to-date Inventory is critical to the success of any quiet zone program. FRA needs accurate up-to-date data upon which to base its calculations of risk. FRA agrees in part with the Cities of Fargo and Moorhead that communities should be allowed to update the inventory and has addressed the issue in § 222.49, ''Who may file Grade Crossing Inventory Forms?''

Paragraph (a)(1) of this section provides that information pertaining to the establishment or continuation of quiet zones must be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control authority or law enforcement authority having control over vehicular traffic at crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency or agencies responsible for highway and railroad safety; and the Associate Administrator. While it is likely that most of these parties will be aware of the establishment of a quiet zone, this provision ensures complete and timely notification. In order to ensure that all parties have notice and sufficient time to prepare for the change at the crossings, all notices required under this section must be provided by certified mail, return receipt requested.

Paragraph (a)(2) requires that the notice shall specify the grade crossings within the quiet zone, identified by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway and the specific date upon which routine locomotive horn use at grade crossings shall cease. With the exception of Pre-Rule Quiet Zones continuing under § 222.41, the cessation date shall not be earlier than 21 days after mailing of the notification. Paragraph (a)(3) details the requirement to reference the regulatory provision under which the quiet zone is being established or continued. In those instances in which the public authority is relying on risk calculations provided by FRA, this paragraph requires that a copy of the FRA web page containing the quiet zone data be included in the notice. In this way, all parties will understand the basis for establishment or continuation of the quiet zone.

Paragraph (b) addresses the requirement that Grade Crossing Inventory Forms be filed with the Associate Administrator for each public and private highway-rail grade crossing within the quiet zone. This paragraph requires two Grade Crossing Inventory Forms for each crossing. One must be dated within six months prior to designation or FRA approval of the quiet zone. This filing will permit FRA to calculate risk based on current grade crossing information, and thus the public authority will be able to make planning decisions based on accurate data. The second Grade Crossing Inventory Form must reflect the SSMs and ASMs in place upon establishment of the quiet zone. This paragraph also requires that the Associate Administrator be furnished the name, title, and contact information of the public official responsible for monitoring compliance with the requirements of the regulation.

Paragraph (b)(5) requires each chief executive officer of each public authority establishing or continuing a quiet zone under this part, to certify that responsible officials of the public authority have reviewed documentation prepared by or for FRA sufficient to make an informed decision regarding the advisability of establishing the quiet zone. This paragraph provides reference to the docket of this proceeding and to FRA's web page for documents which may be of interest to the chief executive or to the reviewing responsible officials. This provision is included in recognition of the differing views as to the efficacy of banning the routine use of locomotive horns at grade crossings and of the fact that establishment of quiet zones is not required by this rule, but is purely voluntary on the part of public authorities.

Section 222.45 When Is a Railroad Required To Cease Routine Use of Locomotive Horns at Crossings?

This section addresses the requirement imposed on a railroad to cease routine use of the locomotive horn upon receipt of notice of establishment of a quiet zone. After a railroad receives notification from a public authority that a quiet zone is being established, the railroad, upon the date specified by the public authority, shall cease routine use of the locomotive horn at all public and private highway-rail grade crossings identified by the public authority. After receipt of such a notice, a railroad is prohibited from routine use of the locomotive horn at the crossing after the date specified in the notice. While the most extensive use of the horn in railroad operations is to provide routine warning at highway-rail crossings, it has many other purposes as an audible signal. As stated in § 222.23(b), this prohibition does not prevent a railroad from use of the horn for other purposes, *e.g.*, to warn railroad employees working near the track of an approaching train, or to warn motorists of the approaching train in the event of a grade crossing safety system malfunction. This is not an all-inclusive list of the uses that this rule does not affect (*e.g.*, use of horn to signal during switching operations; use of horn to alert pedestrians entering stations or to communicate within crews while leaving stations, etc.) Nor does this section prohibit emergency use of the horn, which is expressly permitted by § 222.23, and which is, by definition, not routine.

The form of the notice which triggers the cessation of routine horn use is specified in § 222.43. Section 222.43 also requires that the notice be mailed,

by certified mail, to every railroad operating over the grade crossing subject to the New Quiet Zone.

Section 222.47 What Periodic Updates Are Required?

This section details the periodic updates required of public authorities after a quiet zone is established. The NPRM, at proposed § 222.39(a), (b), and (c), contained provisions generally similar to those in this section. However, rather than divide the section based on SSMs and ASMs as was done in the NPRM, this section distinguishes among quiet zones with SSMs at each public crossing (§ 222.39(a)(1)), and those quiet zones which do not have SSMs at each public crossing (§§ 222.39(a)(2) and 222.39(b)).

There were few comments on proposed periodic updates. The City of Fargo, North Dakota commented that the periodic written affirmation requirements of § 222.39 are excessive. Fargo suggested that FRA's reservation in § 222.39(d) of the right to review at any time the status of any quiet zone is sufficient to assure that the SSM and ASM in place at crossings within the quiet zone fully compensate for the absence of the warning provided by the locomotive horn under the conditions then present at the crossings within the quiet zone. Likewise, to limit the reporting burden of the requirement for periodic quiet zone affirmations in the proposed rule, the City of Chicago, Illinois, recommended that State agencies responsible for railroad safety should be designated to monitor quiet zone grade crossing accidents under their existing procedures. FRA does not agree that an update every three or five years is burdensome. FRA needs to be informed of the current status of the quiet zone and when viewed in light of the safety interest and minimal inconvenience to the public authority, periodic updates on the schedule proposed is being retained.

Paragraph (a) of this section governs periodic information updates for quiet zones with SSMs at each public crossing (those quiet zones established pursuant to §§ 222.39(a)(1) and 222.41(a)(1)). This section requires the public authority to provide to FRA updated information every five years, with a six month window during which the information must be filed. Thus, the rule states that the required information must be filed between 4½ and 5 years after the initial implementation notice required by § 222.43 and every 4½ to 5 years thereafter. This section requires the public authority to affirm in writing to the Associate Administrator that the SSMs implemented within the quiet zone continue to conform to the requirements of Appendix A of this part. This requirement merely ensures that the original basis for establishment of the quiet zone continues to exist. Copies of the affirmation must be sent to the same parties which received the original notice of establishment of quiet zone (§ 222.43(a)): all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; and FRA. The affirmation and copies must be provided to the required parties by certified mail, return receipt requested. In addition, the public authority must file with the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone.

Paragraph (b) of this section governs periodic information updates for quiet zones which do not have an SSM at each public crossing (those quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b) and §§ 222.41(a)(2) and (a)(3)). FRA is providing for a shorter period between affirmations because of the greater possibility that changed circumstances will affect either the level of risk within zones where no SSMs or ASMs were necessary due to low risk or the effectiveness of the safety measures put in place in the quiet zone. Because the safety measures instituted at crossings subject to the three-year affirmation cycle are dependent on local circumstances and local effort, review on a more frequent basis is appropriate. Thus, the period between updates for these quiet zones is three years, rather than the five years for quiet zones provided in paragraph (a). The required information must be filed with the Associate Administrator between 2½ and 3 years after the initial implementation notice required by § 222.43 and every 2½ to 3 years thereafter. This section requires the public authority to affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part, and the terms, if any, of FRA's quiet zone approval. The method of notice and the parties to which the copies of the affirmation must be sent mirror the requirements in paragraph (a) above. As in paragraph (a), an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone is required.

Section 222.49 Who May File Grade Crossing Inventory Forms?

This section addresses filing of Grade Crossing Inventory Forms. The U.S. DOT National Highway-Rail Grade Crossing Inventory provides the basic database by which FRA compiles information pertaining to characteristics of both public and private highway-rail grade crossings. The data collected includes information on the railroad operating over the crossing, such as: the name of the railroad; maximum authorized speed of trains which cross the roadway; type of warning system at the crossing; train traffic at the crossing; type of railroad signal system, if any, at the crossing; and the number of tracks crossing the roadway. Similarly, the inventory contains information about the roadway and motor vehicle traffic at the crossing, such as: the type of road surface; number of lanes; and speed limit.

It is essential that the inventory be up-to-date, accurate and complete in order that FRA's safety analyses are based on the best data. While filing of Inventory Forms has been voluntary, this Interim Final Rule requires the filing of such forms for each grade crossing within a quiet zone.

Paragraph (a) of this section provides that if the State or railroad do not file Grade Crossing Inventory Forms with the Associate Administrator, in accordance with §§ 222.43 and 222.47, the public authority may do so. Those sections require that forms be filed when a quiet zone is established (§ 222.43) and when periodic updates are filed with the Associate Administrator (§ 222.47). Providing the public authority with the authority to file Grade Crossing Inventory Forms prevents the public authority from being powerless if either the State or railroad fails to provide such needed information due, for instance, to the workload issues identified by commenters.

Paragraph (b) requires that, upon the request of the public authority, the railroad owning the line of railroad that includes public or private highway-rail grade crossings within the quiet zone, or within the proposed quiet zone, shall provide sufficient current information to the State and public authority regarding the grade crossing and its operations to enable the State and public authority to complete the Grade Crossing Inventory Form. FRA is requiring that railroads

provide such information because it is information that, in many cases, is known only by the railroad. For instance, maximum authorized speed, track class, and type of railroad signal system at the crossing is not public knowledge and is not information that would be readily available to the public authority. FRA is declining in this rule to require the State to provide such information, except to the extent the State is a cooperating public authority in a quiet zone project (*i.e.*, where a State highway is involved). While it is of course desirable that a State, and indeed, the railroad, cooperate in furnishing this important data, information that would be provided by a State, such as roadway type and traffic volume at the crossing, is readily available to the public authority.

Section 222.51 Under What Conditions Will FRA Review and Terminate Quiet Zone Status?

This provision is intended to ensure that quiet zones, while providing for quiet at grade crossings, also continue to provide the level of safety for motorists and rail employees and passengers that existed before the quiet zones were first established, or in the alternative, the level of safety reached by the average public grade crossing where locomotive horns sound. In order to ensure this level of safety, FRA will review safety data on at least an annual basis. Paragraph (a) addresses FRA's annual risk reviews of New Quiet Zones, while paragraph (b) addresses FRA's annual risk reviews of Pre-Rule Quiet Zones. Paragraph (c) provides for a review of quiet zone status at the initiative of FRA.

Paragraph (a)—New Quiet Zones

Paragraph (a) addresses annual reviews of risk levels at crossings within New Quiet Zones. This paragraph provides that FRA will annually calculate the Quiet Zone Risk Index for each New Quiet Zone established based on risk comparison with the Nationwide Significant Risk Threshold (§ 222.39(a)(2)) and quiet zones established based on application to, and approval of, FRA and that reduce risk to a level at, or below, the Nationwide Significant Risk Threshold (§ 222.39(b)(2)(ii)). Routine annual risk reviews will not be conducted for quiet zones established by having an SSM at every public crossing within the quiet zone (§ 222.39(a)(1)) and quiet zones established based on the risk level having been reduced to a level fully compensating for the absence of the train horn (§ 222.39(a)(3) and (b)(2)(i)). Annual risk reviews are not necessary for those quiet zones because the risk level has been reduced to a level which fully compensates for the absence of the horn. Any subsequent safety variations would be due to factors other than absence of the horn.

Paragraph (a)(1) of this § 222.51 provides that for those quiet zones which are subject to annual risk reviews (those quiet zones established pursuant to §§ 222.39(a)(2) and 222.39(b)(2)(ii)), FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. A Quiet Zone Risk Index above the Nationwide Significant Risk Threshold signifies an unacceptable increase in risk at crossings within the quiet zone.

Paragraph (a)(2) addresses the actions that need to be taken by a public authority to retain a New Quiet Zone in the event the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold.

Paragraph (a)(2)(i) provides that unless the public authority takes certain specified actions to reduce the risk level, the quiet zone will terminate six months after the public authority receives notice that the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold. If the public authority wishes to retain the quiet zone, it must, within that six month period, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone, by reducing the risk level to a level at, or below, the Nationwide Significant Risk Threshold or to a level fully compensating for the absence of the train horn. As part of this commitment, the public authority must provide a discussion of the specific steps the authority plans to take to increase safety at the crossings within the quiet zone. Taking these actions will preserve the quiet zone for three years from the date of FRA notification—sufficient time for the public authority to implement safety measures at the quiet zone.

Paragraph (a)(2)(ii) provides that in addition to complying with paragraph (a)(2)(i) (commitment and discussion of steps to be taken), within three years after the public authority receives notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, the public authority must complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to a level that fully compensates for the absence of the train horn. The public authority must receive approval of the Associate Administrator for continuation of the quiet zone. Procedures for such approval process are those set forth in § 222.39(b). FRA is only requiring that the public authority reduce the risk index to either of the two risk levels (Nationwide Significant Risk Threshold or the risk level that fully compensates for the absence of the train horn). However, there are long term benefits in reducing the risk to the level that fully compensates for the absence of the train horn, rather than reducing the risk level to a level at, or below, the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) and thus subsequent annual risk reviews will not be conducted for that quiet zone. Annual risk reviews are not necessary for those quiet zones because the risk level has been reduced to a level which fully compensates for the absence of the horn. Any subsequent safety variations would be due to factors other than absence of the horn.

Paragraph (a)(2)(iii) provides that failure of the public authority to comply with paragraph (a)(1) (commitment to lower the risk level) shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA of the Quiet Zone Risk Index. This paragraph also provides that failure of the public authority to comply with paragraph (a)(2) (implementation of safety measures) shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA of the Quiet Zone Risk Index.

Paragraph (b)—Pre-Rule Quiet Zones

Paragraph (b) of this section addresses annual reviews of risk levels at crossings within Pre-Rule Quiet Zones. Certain categories of Pre-Rule Quiet Zones are not subject to annual risk reviews, *i.e.*, those Pre-Rule Quiet Zones which met the requirements for public authority designation by implementing SSMs at each public grade crossing within the quiet zone (§ 222.41(a)(1)). Annual risk reviews are not necessary for those quiet zones because the risk level has been reduced to a level which fully compensates for the absence of the horn. Any subsequent safety variations would be due to factors other than absence of the horn.

Paragraph (b)(1) provides that FRA will annually calculate the Quiet Zone Risk Index for two types of Pre-Rule Quiet Zones: each Pre-Rule Quiet Zone that qualified for automatic approval pursuant to § 222.41(a)(2) (quiet zones

with a Quiet Zone Risk Index below the Nationwide Significant Risk Threshold) and those that qualified for automatic approval pursuant to § 222.41(a)(3) (Pre-Rule Quiet Zones that originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold but was below twice the Nationwide Significant Risk Threshold and no relevant collisions had occurred within the five year qualifying period. Paragraph (b)(1) also provides that FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction. In addition, FRA will notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

Paragraph (b)(2) addresses how the Quiet Zone Risk Index affects Pre-Rule Quiet Zones which were approved under § 222.41(a)(2)—those quiet zones which qualified because their Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold. Paragraph (b)(2)(i) provides that the quiet zone may continue if the Quiet Zone Risk Index, as last calculated by FRA, continues to be at, or below, the Nationwide Significant Risk Threshold.

Paragraph (b)(2)(ii) addresses the situation which occurs if the annual risk review indicates that the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is less than twice the Nationwide Significant Risk Threshold. In this situation, the quiet zone may continue only if there have not been any relevant collisions at public grade crossings within the quiet zone for five years preceding the annual risk review. That is, a Pre-Rule Quiet Zone initially established on the basis that the Quiet Zone Risk Index fell below the NSRT may be continued without further action by the public authority only if it would have initially qualified based on the no relevant accident criterion and only if the quiet zone has been free of relevant collisions thereafter.

Paragraph (b)(2)(iii) addresses the situation in which the conditions for continuation of a quiet zone under (b)(2)(ii) do not apply, resulting in the quiet zone will terminating six months after receipt of notification from FRA of the Nationwide Significant Risk Threshold. Explained differently, if the Quiet Zone Risk Index is at, or above twice the Nationwide Significant Risk Threshold, the quiet zone will terminate six months after receipt of FRA's notification. Similarly, if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone during the five years preceding the annual risk review, the quiet zone will terminate six months after receipt of FRA's notification.

Subsequent annual reviews of such quiet zones will be subject to paragraph (3), *i.e.*, the quiet zones will be considered to have been established under § 222.41(a)(3), which permits quiet zones if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the last five years. Paragraph (a)(2)(ii) requires that the public authority must, within three years after FRA notification, complete implementation of SSMs or ASMs sufficient to reduce the Quite Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or to a level that fully compensates for the absence of the train horn. Of course, as in other provisions of this rule, safety measures other than implementation of SSMs at every public crossing require approval by the Associate Administrator.

Rather than reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, the public authority may decide that it is more effective to reduce the risk level to a level that fully compensates for the absence of the train horn. If this action is taken, the quiet zone will be considered to have been established pursuant to § 222(a)(3) and subsequent annual risk reviews will not be conducted, although the quiet zone, like all quiet zones, is subject to reviews at the initiative of FRA. If either of the actions specified by paragraph (b)(4) are not taken, the quiet zone will terminate six months after the date of notification from FRA.

Paragraph (b)(3) governs annual risk reviews of risk levels at crossings within quiet zones established under § 222.41(a)(3)—quiet zones which originally qualified for automatic approval because the Quiet Zone Risk Index was below twice the Nationwide Significant Risk Threshold and no relevant collisions had occurred within the five year qualifying period. Paragraph (b)(3)(i) provides that a quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year. Thus, the quiet zone may continue if the conditions which qualified the quiet zone in the first place have remained essentially unchanged. Paragraph (b)(3)(ii) addresses the situation in which conditions have changed. If the Quiet Zone Risk Index as last calculated by FRA is above twice the Nationwide Significant Risk Threshold, or if a relevant collision has occurred at a public grade crossing within the quiet zone during the previous calendar year, the quiet zone will terminate six months after the date of notification from FRA, unless the public authority takes the actions specified in paragraph (b)(4).

Paragraph (b)(4) addresses the actions that need to be taken by the public authority to retain a quiet zone. This paragraph, which governs Pre-Rule Quiet Zones, is similar to paragraph (a)(2) which governs such situations involving New Quiet Zones. Paragraph (b)(4)(i) provides that if the public authority wishes to retain the quiet zone, it must take certain actions during the six month period following notification by the FRA of the most recent Quiet Zone Risk Index. The public authority must provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone, by reducing the risk level to a level below the Nationwide Significant Risk Threshold or to a level fully compensating for the absence of the train horn. As part of this commitment, the public authority must provide a discussion of the specific steps the authority plans to take to increase safety at the crossings within the quiet zone. Taking these actions will preserve the quiet zone for three years from the date of FRA notification—sufficient time for the public authority to implement safety measures at the quiet zone.

Paragraph (b)(4)(ii) requires that the public authority must, within three years after FRA notification, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level below the Nationwide Significant Risk Threshold or to a level that fully compensates for the absence of the train horn. As in other provisions of this rule, safety measures other than implementation of SSMs at every public crossing require approval by the Associate Administrator.

Paragraph (b)(4)(iii) provides that failure of the public authority to comply with paragraph (a)(1) (commitment to lower the risk level) shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA of the Quiet Zone Risk Index.

This paragraph also provides that failure of the public authority to comply with paragraph (a)(2) (implementation of safety measures) shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA.

Paragraph (c)—Review at FRA Initiative

Paragraph (c) provides that the Associate Administrator may, at any time, review the status of any quiet zone. This section is included in the rule to enable the Associate Administrator to deal with unforeseen safety situations which may arise in the future. Under this provision, if the Associate Administrator makes a preliminary determination that safety systems and measures do not fully compensate for the absence of the locomotive horn, or that there is significant risk with respect to loss of life or serious personal injury, (*e.g.*, if the collision history in the quiet zone indicates that removal of the train horn has resulted in a dramatically higher than expected increase in risk similar to the FEC experience) he or she will provide a written notice of that determination to the public authority and other parties originally provided notice under § 222.43. FRA appreciates the comment of the MDEC which pointed out that the original language in proposed § 222.39(d) limited actual notice of such preliminary determination to the public authority. MDEC commented that limiting notice of FRA's preliminary determination to publication in the **Federal Register** is insufficient. Accordingly, FRA has modified the notification procedures to include notification of those parties originally receiving notification of the establishment of the quiet zone under § 222.43.

The Associate Administrator will also publish a notice in the **Federal Register**. The public authority and other interested parties will have the opportunity to provide comments to the Associate Administrator before any action is taken by the Associate Administrator. After the comment period, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. If the public authority wishes the decision to be reconsidered, it may petition the Associate Administrator for reconsideration under the provisions of § 222.57(b). Upon the filing of such a petition, the Associate Administrator will give the petitioner an opportunity to submit additional materials and an opportunity for an informal hearing. Although very unlikely, conditions at any particular crossing or quiet zone could pose such an imminent hazard that such a protracted process may be contrary to public safety. Thus, paragraph (c) makes clear that the paragraph is not intended to limit the Administrator's emergency order authority under 49 U.S.C. 20104 and 49 CFR part 211. That statutory authority provides the Administrator authority to immediately issue emergency orders ''when an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury.''

Paragraph (d)—Public Authority Responsibility

Paragraph (d) provides that if a quiet zone is terminated under a provision of this section, the public authority has the responsibility to notify all parties listed in § 222.43(a) of the termination. The manner of such notification shall be in accordance with § 222.43(a).

Paragraph (e)—Railroad Responsibility

Paragraph (e) provides that upon notification from either the public authority, or from FRA, that the quiet zone is being terminated, the railroads shall, within seven days, sound the locomotive horn when approaching and passing through all public highway-rail crossings within the former quiet zone.

Section 222.53 What Are the Requirements for Supplementary and Alternative Safety Measures?

This section, through reference to Appendices A and B, lists acceptable SSMs and ASMs. Paragraph (a) states that approved SSMs are listed in Appendix A, while paragraph (b) states that Appendix B lists those ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b).

Paragraph (c) states that standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals are not considered SSMs or ASMs. This provision is consistent with the statutory definition of an SSM (49 U.S.C. 20153(a)(3)).

Section 222.55 How Are New Supplementary Safety Measures Approved?

This section addresses the manner in which new SSMs are demonstrated and approved for use. This section is similar to the NPRM's proposed § 222.43, with three exceptions. Paragraph (e) has been revised to provide that when the Associate Administrator approves the use of a new SSM, notice of that approval will be published in the **Federal Register**. Paragraph (d) has been revised to provide that the Associate Administrator may impose any conditions or limitation on use of the SSMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn. The standard of a level of safety ''at least equivalent to that provided by the locomotive horn'' is more appropriate and consistent with the rest of the rule than the former standard of ''the highest level of safety.'' Paragraph (d) has also been revised to provide that the Associate Administrator, rather than approving a proposed safety measure as an SSM, may approve it as an ASM.

Paragraph (b) provides that interested parties may demonstrate proposed new SSMs or ASMs to determine if they are an effective substitute for the locomotive horn in the prevention of highway-rail grade crossing casualties. Paragraph (c) provides that the Associate Administrator may order railroad carriers operating over a crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs. This paragraph reflects statutory language and requires that proposed new SSMs (and ASMs) have been subject to prior testing and evaluation before such an order is issued. The Administrator's order to the railroads to temporarily cease sounding of horns may contain any conditions or limitations deemed necessary in order to provide the highest level of safety. These provisions provide an opportunity for the testing and introduction of new grade crossing safety technology which would provide a sufficient level of safety to enable locomotive horns to be silenced.

Paragraph (d) provides that upon the successful completion of a demonstration of proposed SSMs or ASMs, interested parties may apply for their approval. This section requires certain information to be included in every application for approval.

Paragraphs (e) and (f) provide that if the Associate Administrator is satisfied that the proposed SSM fully compensates for the absence of the locomotive horn, its use as an SSM (with any conditions or limitations deemed necessary) will be approved and it will be added to Appendix A. Rather than approving the proposed safety measure as an SSM, the Associate Administrator may approve it as an ASM. The applicant is notified and a

notice of such approval is published in the **Federal Register**.

Paragraph (g) provides an opportunity to appeal a decision of the Associate Administrator for Safety. The party applying for approval of an SSM or ASM may appeal to the Administrator a decision by the Associate Administrator rejecting a proposed SSM or ASM or the conditions or limitations imposed on its use.

Section 222.57 Can Parties Seek Review of the Associate Administrator's Actions?

This new section has been added to explicitly detail the right of parties to seek review of the Associate Administrator's actions. Paragraph (a) addresses decisions by the Associate Administrator granting or denying approval of a new SSM or ASM under § 222.55. A public authority or other interested party may petition the Administrator for review of a decision by the Associate Administrator approving or denying such an application. This paragraph requires that the petition be filed within 60 days of the decision to be reviewed. The petition must specify the grounds for the requested relief, and be served on all parties identified in § 222.43(a) (all railroads operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, and the State agency responsible for highway and road safety). Filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed unless the Administrator specifically provides otherwise and either gives notice to the petitioner or publishes a notice in the **Federal Register** to that effect. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

Paragraph (b) addresses reviews of decisions by the Associate Administrator: denying an application for approval of a quiet zone; requiring additional safety measures at crossings within a quiet zone; or terminating a quiet zone. This paragraph provides that a public authority may challenge a decision by the Associate Administrator in the above situations by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for the requested relief, be filed within 60 days of the decision to be reconsidered, and be served upon all parties identified in § 222.43 (a). The Associate Administrator will then provide the petitioner an opportunity to submit additional materials and an opportunity for an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator will issue a decision on the petition. This decision will be administratively final.

Section 222.59 When May a Wayside Horn Be Used?

The effectiveness of wayside horns as compensating for the lack of a locomotive horn has been addressed earlier in this notice. This section addresses the circumstances in which wayside horns may be used in lieu of the locomotive horn.

Paragraph (a) provides that a wayside horn conforming to the requirements of Appendix E may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates. Thus, installation of wayside horns are not limited to quiet zones, but may be used at any grade crossing equipped with at least gates and lights.

Paragraph (b) addresses use of wayside horns within quiet zones. Wayside horns conforming to the requirements of Appendix E may be installed within a quiet zone. FRA is fully aware that in one sense, the purpose of a quiet zone may be considered to be defeated if horns still sound to indicate the approach of a train, irrespective of whether the horn is stationary or is located on a locomotive. However, the choice is left up to the public authority. That entity may find the wayside horn, with a horn sounding in a less obtrusive manner, to be preferable to installation of SSMs. The presence of a wayside horn will be considered to be the same as a crossing treated with an SSM in determining the length of a quiet zone. Thus, a crossing equipped with a wayside horn may be in the middle of a one-half mile long quiet zone without jeopardizing the establishment of the quiet zone. In those situations in which the Quiet Zone Risk Index must be calculated, any grade crossings equipped with a wayside horn shall not be included in such calculations. The risk level will thus be determined by the average risk level at the remaining crossings.

Appendices A and B

Appendix A lists those SSMs which FRA has determined effectively compensate for the lack of a locomotive horn. Because each SSM in this appendix fully compensates for the lack of a locomotive horn, a quiet zone may be established without specific FRA approval. Appendix B lists those ASMs which may compensate for the lack of a locomotive horn depending on the extent of implementation of the safety measure. Because of the many possible variations, FRA acceptance of the proposed implementation plan is required. The introduction to Appendix A discusses the issues and actions that State and local governments should be aware of in determining how to proceed in implementing quiet zones. It is meant to assist in the community's decision-making process in determining whether to designate a quiet zone under § 222.39(a) or to apply for approval of a quiet zone under § 222.39(b).

Appendix A

This Appendix lists those SSMs which FRA has determined effectively compensate for the lack of a locomotive horn. Included in the discussion of each SSM is an ''effectiveness'' figure for that measure. That figure indicates the effectiveness of the SSM in reducing the probability of a collision at a highway-rail grade crossing.

As discussed earlier, effectiveness rates are based on actual experience showing how much each SSM has reduced the probability of a collision. The issue of what should constitute an SSM or ASM generated a number of comments to the NPRM. Generally, communities expressed displeasure with the proposed list of SSMs. Railroads, however, expressed general satisfaction with the suggested SSMs.

The majority of public comments focused on communities' dissatisfaction with the proposed SSMs because they are thought to be: (1) Prohibitively expensive to implement; (2) impracticable, unfeasible or inapplicable to their particular community's street grid; and (3) incompatible with the three-year implementation period proposed in the NPRM. The cost of installation and maintenance is of particular concern to communities. State Senator Patrick J. O'Malley of Illinois predicted that the cost of installing SSMs will be ''enormous.'' Selectman Attillio Paglia from the Town of Rawley, Massachusetts expressed displeasure that local funds would have to be spent implementing expensive SSMs instead of funding other local concerns such as

schools, libraries and police stations. The General Manager of Pioneer Valley Railroad in Westfield, Massachusetts noted that while the SSMs will be installed at the cost of the community, they will be maintained by the railroads. A representative of BLAST (Beverly [Massachusetts] Lobbying Against Sounding of Train Horns) recommends that any Federal or State funding for new or improved crossings have a stipulation requiring an SSM at each crossing.

Some communities were dissatisfied with the proposed list of SSMs because the available options are claimed to be too limited, since, it is argued, only one or two of the SSMs may be applicable to a particular community. For example, State Representative Michael Festa from the City of Melrose in Massachusetts noted that many of crossings in his district are very busy commuting streets that are perpendicular, which makes some SSMs unfeasible. Likewise, Councilman Doyle Slater of LaGrand, Oregon noted that photo enforcement, one way streets, nighttime closures and medians are not practical at many crossings. Moreover, communities in Illinois, as expressed by the Commissioner of Chicago's Department of Transportation, have fewer options to choose from because many of the prescribed SSMs are not feasible or legal in Illinois. Megan Swanson, a Planning Coordinator for the West Central Municipal Conference, stated that only one way streets or closures were applicable. An extreme case is that of the village of Hinsdale, Illinois, where the President of the village, opined that no SSM is possible within village limits. Illinois had particular problems with the proposed SSMs because, as noted by the Village of Winfield, the Illinois Commerce Commission (ICC) did not approve the use of four-quadrant gates or photo enforcement at crossings, thereby further limiting the options available to communities. See discussion under ''Chicago Region'' above for general responses to concerns related to Illinois practice.

In the NPRM, and to an even greater extent in this Interim Final Rule, FRA has provided flexibility to public authorities in the selection of SSMs to be used at crossings within a community. There are, of course, wide variations in costs between, for example, four quadrant gates and medians. Because of those variations, and variations in the ability of communities to pay for various improvements, and physical limitations at certain crossings limiting options, FRA crafted the NPRM and this Interim Final Rule to provide the greatest level of flexibility to the community. The public authority is best suited to determine which SSM is appropriate for a specific crossing. That body, will, in addition to considering cost, consider other factors as well: physical limitations at the crossing; aesthetics; maintenance costs; and acceptance of a specific safety measure by the State.

FRA believes that providing public authorities with the choice of implementing SSMs or alternative measures, the choice of which measures to implement within those categories, and in many circumstances, the choice of which crossing to improve in order to bring the quiet zone's risk level into the acceptable range, provides an almost unlimited range of choices and thus a vast range of potential costs. FRA notes that the estimates of the cost of SSMs in the Chicago Region made by various parties during the NPRM comment period were notably unrealistic and were based on the most expensive scenario of four-quadrant gates at every crossing and construction costs based on the invalid assumption that each crossing would be upgraded from no warning system to four-quadrant gates.

The AAR has emphatically stated its position that locomotive horns should only be banned at crossing that have sufficient safety devices to substitute for the audible warning. In the view of the AAR, ''engineering'' methods, such as four-quadrant gates and closures can be effective substitutes for the sounding of horns, while the use of ''non-engineering'' SSMs like photo enforcement, programmed enforcement, public awareness and education are not appropriate. The AAR submits that these non-engineering measures do not provide assurance that they sustain the same level of safety as a locomotive horn. In contrast to the AAR's stance, METRA's chairman suggested that non-engineering measures such as advanced train alert technology, grade separation projects, stricter enforcement penalties, and public awareness education projects are more effective and a less expensive way to improve crossing safety than engineering methods. FRA has considered AAR's view along with those comments supporting the use of such non-engineering safety measures. Such safety measures are only acceptable when they have resulted in documented reduction in traffic law violation rates at crossings. In such cases, their efficacy in reducing risk has been shown. Further monitoring of such reductions will help to ensure that they remain effective. However, FRA agrees that photo enforcement requires scrutiny on a location-specific basis and has therefore moved photo enforcement to the category of Alternative Safety Measures.

Several communities such as Arvada, Colorado; Brighton, Colorado; Fort Collins, Colorado; Wichita, Kansas; Manchester by the Sea, Massachusetts; Northfield, Minnesota; Roseville, California; and Madison, Wisconsin suggested adding the following to the list of SSMs in order to add flexibility and reduce installation costs: (1) Wayside horns, (2) longer gates that cover the entire road, (3) placing lighting on trains similar to that of emergency vehicles, and (4) articulated gates. As noted elsewhere in this rule, wayside horns are acceptable substitutes for the locomotive horn under the provisions of § 222.59. Long gates that cover the entire road are acceptable in one-way street situations. *See* Appendix A. FRA is not at this time aware of non-articulated gates that extend over two opposing lanes of traffic, and it would not appear prudent to use such an arrangement in most cases given the potential to entrap vehicles between the gates. FRA has explored the use of articulated gates that would descend from a single apparatus to block the approach to the crossing in the normal direction of travel and continue down to block the exit lanes from the crossing (on one or both sides). As stated in the NPRM, ''such articulated gates appear to be particularly attractive for two-lane roads where the highway-rail crossing is at a sufficient distance from other intersections or obstructions that could cause traffic to back up on the crossing. In principle, such gates should have the same effectiveness as other four-quadrant gate arrangements.'' While use of such gates has been studied, it is apparent that they have not yet reached a stage of reliability such that they would be an acceptable SSM. FRA will continue to monitor their development for future acceptance as an SSM.

The use of longer gate arms has also been considered during the rulemaking. Longer gate arms extend beyond the centerline of the roadway and block a portion of the opposing lane of traffic. This application differs from the long gate arms previously discussed which extend completely across the roadway in that the longer gate arms do not completely block the lane of a vehicle exiting from the crossing. The opening that is left between the end of the gate arm and the curb would allow room for a vehicle to exit the crossing without becoming trapped on the crossing. The longer gate arms would make it more difficult for a motorist to drive around the lowered gate arms. At this time there have been few test installations of this technology, and FRA does not feel that

there is enough experience with longer gate arms to include them as an SSM at this time. FRA will continue to monitor their development for future acceptance as an SSM. FRA is also aware of a manufacturer that has developed a gate arm that telescopically extends beyond the centerline and is equipped with a sensing mechanism which will stop the extension if it encounters an obstacle. This technology has potential to be considered as an SSM but has yet to be field tested. FRA will also monitor this technology.

California PUC's Rail Safety and Carrier Division advised that each crossing in a quiet zone should be equipped with ''Remote Health Monitoring.'' Missouri's Division of Motor Carrier and Railroad Safety stated that each SSM should have constant warning time with redundancy. We note that the rule requires that all active grade crossing warning devices in New Quiet Zones be equipped with power-out indicators (defined to include remote health monitoring that includes reporting exceptions to primary power status) and (with limited exceptions) constant warning time devices. *See* § 222.35(b).

FRA received a large number of comments addressing specific SSMs. A brief summary of comments received follows.

Temporary Closure of a Public Highway-Rail Grade Crossing

Some communities expressed concern with the temporary closure. The communities of Orlando Park and Wilmette, both in Illinois, viewed closures as impractical or not feasible. Community representatives argued that most crossings are major thoroughfares, and thus closing a crossing would have a serious impact on traffic patterns. Jeffrey Smelty, chairman of the Executive Committee of the Chicago Area Transportation Studies Council of Mayors, stated that closures are a ''viable option only in a few instances of low volume roads.'' The President of the Village of Northbrook claims that closing low volume crossings would have little effect on collisions since the low volume itself decreases the statistical risk of an accident. Two States, the Kansas DOT and Missouri Division of Motor Carrier and Railroad Safety commented that if a crossing can be temporarily closed part of the day, then it should be able to be closed permanently. They were also concerned with the potential for human error in closing and opening the roadway. In contrast, the North Carolina DOT stated that overnight closures should be given a preference in the rule because it would entirely eliminate the need for horns to sound.

The AAR expressed concern regarding the potential confusion that would occur if States and localities adopt different closure periods. Different closure times would mean that engineers would have to know each crossing's closing period, thus placing an extra burden on the engineer. Therefore, the AAR recommended that the FRA establish uniform closure periods for every day of the week. Additionally, the AAR recommended that the FRA require barriers that cannot be moved by the public and cannot be crossed by automobile or pedestrian traffic. A comment by Wichita, Kansas took into account the possible side effects of temporary closures. They noted that temporary closures may result in drivers speeding to beat the closure time. They were also concerned about the possibility of disrupting emergency vehicle service routes.

FRA does not view the temporary closure as a solution for every crossing in every situation. Commenters are indeed correct that in some situations temporary closures are impractical. However, temporary closures can in some circumstances provide a legitimate alternative to other SSMs. This alternative is but one among a number of choices available to public authorities in developing quiet zones. FRA believes that the MUTCD provides appropriate standards for barriers and that train crews can become familiar with quiet zone time periods.

Four-Quadrant Gate System

Comments on the four-quadrant gate system (''4Q system'') centered on its cost, potential for failure, and dangerousness. The FRA did receive praise on this proposed SSM from some, including the Washington Department of Transportation, which stated that the proposal ''indicated extensive thought and effort.'' Others had problems with the 4Q system. The State of Illinois was particularly concerned with the 4Q system because the ICC did not allow for their use at highway-rail grade crossings. The ICC had concerns about safety regarding trapped vehicles in the crossing. Also, the ICC believes that it will take more time than the FRA estimates for vendors and railroads to design, manufacture, and install the gates to meet all of the new demand.

Many comments provided suggestions for improving the design of the 4Q system to make its overall functioning safer. The Florida Department of Transportation recommended that median barriers of at least 100 feet be required at crossings in addition to the gates. This overall sentiment was echoed by the Missouri Division of Motor Carrier and Railroad Safety, which objected to the term ''blocked crossing'' being used to describe the 4Q system because the gates only ''greatly deter'' a driver and do not totally impede a vehicle or pedestrian from crossing the gated tracks. The New Jersey Department of Transportation suggested that all traffic signals within 200 feet be equipped with preemption circuitry.

Most States and communities, like Moorhead, Minnesota, were particularly concerned with the danger of a car getting trapped within the gates on the tracks. Robert Guttman, a top official on the MBTA Advisory Board believes that quadrant gates should be outfitted with a safety mechanism to prevent vehicles from being trapped. Another safety measure that communities would like to see is constant warning time circuitry. The AAR points out, however, that this system may be impractical at crossings with three or more tracks.

One of the most controversial issues centered on whether to have the four-quadrant gates programmed to stay up or down during a failure of the system. Concerned with safety, the North Carolina DOT clearly stated that gates should always fail in the down position. This position was supported by a study conducted in conjunction with Norfolk Southern titled ''Exit Gate-Arm Fail-Safe Down Test.'' The data provided evidence that fewer vehicles traveled through a failed crossing when all the gates were in the down position than when one or more of the gates were in the upright position. Communities and their representatives disagree; for example, Illinois State Representative Eileen Myins stated, ''What will they do when double gates malfunction, and there is no way around them?'' Gate failure appears to be a ''particularly bothersome'' problem, as noted by Massachusetts State Representative Michael Cahill: ''gates frequently malfunction in the down position, resulting in motorists who leave their car, get on the track, and wave motorists across the tracks because there is no train approaching.'' Mayor William Scanlon of the city of Beverly in Massachusetts also reports frequent incidents of failure where police have had to direct traffic around the gates. Therefore, these communities recommended that the gates fail in the upright position.

Another area of great concern with the four quadrant gate system was the cost, which Orlando Park, Illinois describes as ''inordinately expensive.'' A representative of Chicago referred to a

study done by the General Accounting Office, which stated that a single system equipped with sensors to detect trapped cars could cost $1 million. The BRS disagrees, estimating that vehicle detection systems can be installed for around $175,000.

Vehicle detection systems are used for a variety of purposes in traffic control systems. They generally consist of inductive loops buried just beneath the surface of the roadway to detect a metal mass over the location. Their cost will vary depending upon the complexity of the application. In pilot studies and high-speed rail applications, costs of four-quadrant gate installations with complex vehicle presence detection systems have approached $1 million; however, it appears that much of this cost has resulted from attempts to make the circuitry fully fail-safe in nature. Neither the MUTCD nor FRA regulations require that vehicle presence detection function on a fail-safe or closed circuit principle. Rather, in the context of a four-quadrant gate system it appears that a reasonable design objective would be a high degree of reliability in detecting a motor vehicle. FRA believes that a typical installation should be feasible for costs in the range of $175,000 to $250,000.

FRA wishes to emphasize that use of vehicle presence detection makes sense only where there is reason to be concerned about storage on the crossing due to cued traffic (normally as a result of nearby intersections). For instance, the State of Florida has installed several four-quadrant gate systems without vehicle presence detection along the Tri-Rail commuter line in south Florida. Those installations have functioned well. By contrast, FRA agrees that, at many Chicago Region crossings with nearby traffic signals and heavy traffic volumes, use of vehicle presence detection to keep the exit gate arms up until all vehicles clear the track will be fully warranted. The question of whether the exit gates should fail up or down has been resolved by amendments to the MUTCD subsequent to the publication of the NPRM. These amendments permit failure down only in the presence of remote health monitoring.

The AAR objected to FRA's proposed requirement that gates must be activated by use of constant warning time devices. The AAR stated that ''constant warning time devices are not always practical. For example, constant warning time devices may be impractical where three or more tracks are located close to each other. Thus, FRA should at most require constant warning time devices where practical.'' FRA acknowledges concerns about the use of constant warning time devices in electrified territory and AAR's concerns about three track crossings. Accordingly, FRA is requiring constant warning time devices where reasonably practical.

Gates With Medians or Channelization Devices

In the NPRM, FRA proposed to require that gates with medians or channelization devices be considered SSM if: opposing traffic lanes on both highway approaches to the crossing are separated either by medians bounded by barrier curbs or medians bounded by mountable curbs if equipped with channelization devices. FRA proposed that such medians must extend at least 100 feet from the gate, unless there is an intersection within that distance. If so, the median must extend at least 60 feet from the gate, with intersections with that 60 feet closed or moved.

The median barrier option was given positive comments by some, and constructive criticism by others. Communities commented that they can be impracticable, expensive, unsafe, and that the required median length is too long. Planning Coordinator of the West Central Municipal Conference, Megan Swanson and Mayor Jeffrey Smelty pointed out that median barriers are simply ''aesthetically displeasing'' or have ''aesthetic problems.'' Orlando Park, Illinois submitted that the medians were ''inordinately expensive.''

Several commentaries focused on the possible safety hazards that may arise when median barriers are installed. Mayor William Scanlon of the City of Beverly noted that fire apparatus would be inhibited when trying to pass vehicles near the grade crossing medians. The New Jersey Department of Transportation offered a possible solution by suggesting that mountable medians be installed to allow for emergency vehicle access. The problem with mountable devices, as the Florida and North Carolina DOTs point out, is that they can be ''high maintenance'' items, and may encourage drivers to drive over the median. Others, such as LCI Energy of Ipswich, Massachusetts, were concerned about disabled vehicles and the driver's ability to escape from the vehicle. Jefferson Parish, Louisiana noted that medians may invite motorists to make additional U-turns that they would not have otherwise made but for their driveway being blocked. Another safety concern brought up by David Bier of LaGrange, Illinois, is that installing barriers may create a secondary problem of vehicles crashing into the medians.

The main body of commentary complained that median barriers are simply impracticable. Many submissions, such as those from the Kansas Department of Transportation; Chicago Department of Transportation; Ipswich, Massachusetts; Edward Sirovy of the Dupage Railroad Safety Council; Gene Shannon of the Metropolitan Council of Governments; Wilmette, Illinois; Mayor Jeffrey Smelty; Peter Wells, City Attorney of Pendleton, Oregon; and Joan Johnson of BLAST, noted that most of their crossings are adjacent to a parallel highway intersection, making barriers unusable, especially if the required distance remains 100 feet. These comments also noted that narrow roads would make installation of median barriers impossible. Gene Shannon was particularly concerned that motorists would be unable to access businesses if a median was installed. Communities located in the north said that medians were not an option because they would either prevent snow from being plowed off the road, or be inadvertently destroyed by the plow.

Another body of commentary focused on the required length of the proposed medians. Most communities requested that the FRA shorten the requirement so that the barriers could be installed at more locations. But the Florida Department of Transportation requested that the medians be mandated to be a fixed height of nine inches and a length of 200 feet, so that motorists would not drive around them. Of the commenters that believed medians should be shorter, there was disagreement as to whether the length should be set or decided on a crossing by crossing basis. The Kansas Department of Transportation stated, ''We encourage that the determination of the length of median be made as a crossing specific engineering decision and that the 100-foot distance is only a recommended practice.'' The Missouri Division of Motor Carriers submitted that a shorter median may be just as effective as a longer one, and that a State level diagnostic team should assess the particular length of each median. In contrast, Illinois ICC recommended that FRA avoid arbitrary criteria for the length and material of medians.

FRA understands the point made by many commenters that median length may be substantially constrained by roadway geometry. However, safety at highway-rail crossings has already benefitted substantially from use of median arrangements at many crossings, and there is no reason not to fully exploit this technique in support of community quiet. Accordingly, FRA continues its approval of shorter channelization arrangements and, in the revised Appendix B, invites local

authorities to provide estimates of effectiveness that are reasonable considering the extent of deviation from the nominal requirements of Appendix A.

FRA agrees with the Florida DOT that use of 200 foot medians will often be recommended when practicable. However, FRA believes that the prescribed minimums of 100 and 60 feet are consistent with the designated effectiveness rate. A public authority that can show a higher effectiveness rate for longer medians may bring in that estimate for consideration under Appendix B.

FRA also understands the conflict to which traffic control authorities may be subject with respect to the appearance of channelization arrangements, but FRA does not believe that in the end aesthetics should be countenanced as a bar to saving lives and preventing serious personal injury. FRA believes that in many cases local public authorities will utilize options such as using native stone or decorative plantings to enhance the appearance of median arrangements, as they have done in other settings. To the extent that roadway width does not allow for these treatments, and to the extent channelization devices such as flexible delineators are viewed as unacceptable in a particular community, the incremental cost of alternative arrangements should be evaluated as a cost of community beautification rather than as a cost of this rule.

One Way Street With Gates

The use of one way streets with gates received sparse comments, mostly directed to their applicability. Illinois ICC pointed out that the one way street is rarely, if ever acceptable to local governments, because it would cause major disruptions in traffic flow. The Missouri Division of Motor Carrier and Railroad Safety and the Chicago Department of Transportation noted that there is limited applicability to most roads without violating traffic engineering practices. This option is considered safe, however, as noted by the BRS, who strongly support the option.

FRA notes that, despite the protestations of several commenters, use of one-way streets in American cities and towns is quite substantial and that, without further use of unidirectional traffic flows, attention to engineering of existing locations would permit credit to be taken for this SSM at very low cost. FRA further notes that new one-way traffic patterns, if applied to residential and industrial areas (not including retail commercial areas where economic effects may be unacceptable), could be useful in designing a quiet zone and might help to serve other public purposes, such as providing additional on-street parking where current roadway width is a constraint and addressing other local issues, such as addressing particularly hazardous intersections for left turns.

Photo Enforcement

The comments regarding photo enforcement were generally negative. Most commenters objected to this either because it is not permitted in their State or because it is viewed as ineffective. California, Kansas and New Jersey requested that the option be removed from the list because of its ineffectiveness. Additionally, there were complaints about the cost of photo enforcement.

A significant objection expressed by the Kansas DOT and the Massachusetts Executive Office of Transportation and Construction, is that photo enforcement simply does not provide a physical impediment to driving around gates and does nothing to replace the audible warning provided by a locomotive horn. While the deterrent effect is recognized, it is argued that it is minimal because, as Nevada states, ''It does not provide a positive means of separating vehicles and pedestrians from trains, as do other SSMs.'' The AAR strongly opposes its use as an SSM, stating that ''[t]he proposed non-engineering measures do not provide assurance that they can sustain the same level of safety as a locomotive horn.'' Using a speeding car metaphor, Mayor Alisi, trustee of Glencoe, pointed out that receiving a ticket is not a deterrent. Wichita, Kansas categorized photo enforcement as an ''after the fact safety measure.''

In contrast, the President of Traffipax, a supplier of photo enforcement equipment, submitted that photo enforcement is very effective, citing a 40 percent reduction in violation rates, even when dummy cameras are installed along with real cameras. Another benefit that he mentioned is that the photos provide a record of conditions and history of violations at a given crossing. Supporting this view is Dan Lauzon, first vice-chairman of the BLE Massachusetts Legislative Board, who noted that motorists are ''angelic'' when they know they are being watched by cameras.

Based on the comments and FRA's own review, photo enforcement has been redesignated as an ASM rather than an SSM. FRA has been persuaded that photo enforcement more appropriately belongs in the listing of ASMs. Its non-engineering nature and need for regular monitoring drives its inclusion as an ASM rather than the engineering solutions listed as SSMs.

Another concern expressed with photo enforcement (irrespective as to whether it is an ASM or ASM) is that it not currently accepted in every State. The Missouri Division of Motor Carrier and Railroad Safety noted that it is not permitted under present State law. The City Attorney of Pendleton, Oregon believes that the State constitution may have to be amended to permit photo enforcement. Although not every State currently permits automated photo enforcement, the trend is towards greater acceptance of such methods for other traffic enforcement purposes. There is every reason to believe it can work in the grade crossing law violation context, especially when supported by public awareness efforts. It is true that some States will have to change their laws in order to take advantage of this alternative. FRA believes sufficient time has been built into the rule for that to happen. It is important to note that use of photo enforcement, like every SSM and ASM, is voluntary. Thus, if a State chooses not to provide for its use within the State, other means for compensating for the lack of a locomotive horn are available under this rule.

It is clear that the SSMs proposed in the NPRM do not receive universal acceptance among the commenters. However, FRA remains convinced that the proposed SSMs are sound safety strategies and provide a range of realistic options from which communities can choose to meet their own needs. The ability to vary SSMs, through the ASMs allowed by Appendix B, provides additional flexibility for communities.

Effectiveness of Supplementary Safety Measures

The effectiveness (see definition of effectiveness rate in § 222.9) figures discussed for each SSM are based on available empirical data and experience with similar approaches. The effectiveness figures used in Appendix A are subject to adjustment as research and demonstration projects are completed and data is gathered and refined. FRA is using these estimates as benchmark values to determine the effectiveness of an individual SSM and the combined effectiveness of all SSMs along a proposed quiet zone.

FRA's final study of train horn effectiveness indicated that collision probabilities increase an average of 66.8 percent when horns are silenced at crossings with flashing lights and gates. As such, the SSM should have an effectiveness of at least .40 (reducing the

probability of a collision by at least 40 percent) in order to compensate for this 66.8 percent increase. For example, if a select group of 1,000 crossings is expected to have 100 collisions per year with train horns being sounded, this same group of crossings would be expected to have 167 collisions per year once the train horn is banned if no other safety measures are implemented and other factors remain unchanged. Conversely, if these same crossings were experiencing 167 collisions per year while the horn was banned, it would be expected that this number would reduce to 100 once use of the horn is re-instituted. This would equate to an effectiveness of 67/167, or .40.

FRA is aware this figure is an average, but it has the benefit of reflecting the broadest range of exposure available to the agency. FRA is willing to consider well founded arguments that train horn effectiveness is heightened or reduced under specific circumstances. However, any such argument would need to be grounded in sound data and analysis. This could potentially create significant difficulty in administration of the rule, since historic collision patterns over a small number of crossings are not, by themselves, meaningful predictors of future exposure.

Much of the data available today to evaluate the effectiveness of SSMs reflect the reduction in violation rates, not collision rates. (Collisions are rare, and determination of a collision rate reduction for any one SSM requires long term data collection.) Only one study (in Los Angeles) has contrasted collision rates with violation rates, and out of necessity (until additional data are available), this finding is used in these analyses. In the Los Angeles demonstration it was noted that a carefully administered and well publicized program of photo enforcement reduced violation rates by 92 percent, while collisions were reduced by only 72 percent. This ratio, 72:92 or .78, is being used to adjust violation rate reductions in order to estimate resultant reductions in collision rates for law enforcement, education/awareness and photo enforcement options described in Appendix B. Violations that result in collisions constitute a small subset of all violations. It is reasonable to infer that education and legal sanctions may lack effectiveness for several segments of the population, including those who do not become aware of the countermeasures (*e.g.*, because they are not residents of the area, do not follow public affairs in the media, or are difficult to reach because they are not fluent in English or other principal languages in which information is disseminated) and those who are particularly inclined to violation of traffic laws. As such, for law enforcement, education/awareness and photo enforcement options the rate of violations must be reduced 78 percent in order to determine the effectiveness value for the ASM.

In contrast, engineering improvements such as those described in Appendix A appear to work in synergy with existing warning systems to condition and modify motorist behavior, reducing both the number of violations and the number of very close calls (violations within a few seconds of the train's arrival). Four-quadrant gates installed to date, for instance, appear to have been almost completely successful in preventing collisions. Although we would not expect this extraordinarily high level of success to be sustained over a broader range of exposure, excellent results would be expected. Accordingly, for engineering improvements contained in Appendix A, this rule adopts estimates of success drawn from carefully monitored studies of individual crossings.

1. Temporary Closure of a Public Highway-Rail Grade Crossing

This SSM has the advantage of obvious safety and thus will more than compensate for the lack of a locomotive horn during the periods of crossing closure. The required conditions for closure are intended to ensure that vehicles are not able to enter the crossing. In order to avoid driver confusion and uncertainty, the crossing must be closed during the same hours every day and may only be closed during one period each 24 hours. FRA believes that such consistency will avoid unnecessary automobile-to-automobile collisions in addition to avoiding collisions with trains. Activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad. Responsibility for activation and deactivation of the system may be contracted to another party, however, the appropriate public authority shall remain fully responsible for compliance with the requirements of this section. In addition, the system must be tamper and vandal resistant to the same extent as other traffic control devices.

Effectiveness: Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would equal 1. However, traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular ''closure'' was accomplished by a grade separation.

2. Four-Quadrant Gate System

A four-quadrant gate system involves the installation of gates at a public highway-rail grade crossing to fully block highway traffic from entering the crossing when the gates are lowered. This system includes at least one gate for each direction of traffic on each approach. A four quadrant gate system is meant to prevent a motorist from entering the oncoming lane of traffic to avoid a fully lowered gate in the motorist's lane of traffic. Because an additional gate would also be fully lowered in the other lane of the road, the motorist would be fully blocked from entering the crossing.

FRA is requiring that all four-quadrant gate systems conform to the standards contained in Part 8, Section D.05 (''Four-Quadrant Gate Systems'') of the MUTCD. These standards were added by FHWA to the MUTCD subsequent to publication of the NPRM. Because four quadrant gates would be used at crossing where horns are not sounded, FRA is requiring the following in addition to the MUTCD requirements.

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices. FRA has been made aware that constant warning devices may not work properly under certain circumstance such as in electrified territory. If conditions exist that would not allow constant warning time systems to work as intended, other appropriate types of control circuitry may be used. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

c. Crossing warning systems must be equipped with power-out indicators. Power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if

warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, power-out indicators are required.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

Additionally, FRA is recommending that new installations conform to the following:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections. It should be noted that the MUTCD recommends that exit gates should fail in the ''up'' position unless a traffic engineering study indicates otherwise.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPDs should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both. The installation of traffic channelization increases the effectiveness of the four quadrant gates and should be considered when looking at situations where it appears that motorists may be tempted to circumvent the warning devices.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

Effectiveness:

FRA estimates effectiveness as follows:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with medians of at least 60 feet (with or without presence detection): .92.

The estimate of .82 for free-standing four-quadrant gates (no medians and no presence detection) is a highly conservative figure involving a discount from documented experience. As noted above, four-quadrant gates installed in the United States thus far have been highly successful. North Carolina Department of Transportation (NCDOT) conducted a pilot study of a four quadrant gate system at the Sugar Creek Road crossing in Charlotte, NC. Following installation of the four quadrant gates, the number of violations fell by 86 percent. Traffic channelization was added later to the four quadrant gates, reducing violations to an even greater extent, by 97 percent. During the test, the train horn was also sounding. To account for any complementary effects of the train horn, FRA uses more conservative effectiveness rates of 82 percent and 92 percent for four quadrant gates without and with medians, respectively.

Four-quadrant gate installations undertaken thus far in the United States have generally not employed vehicle presence detection (VPD). However, some future installations will incorporate this feature to ensure coordination with other traffic signals and for other purposes. For instance, tight geometry may not allow for any storage space within the gates should queuing of traffic at a STOP sign on one side of the crossing prevent prompt clearance by a motor vehicle. In such cases, leaving the exit gates in the raised position may be elected. Installing VPD will cause exit gates to remain up indefinitely as one or more vehicles pass over the crossing. Although providing VPD avoids the scenario of ''entrapment'' (long feared by some in the railroad community as a liability risk), it also allows the possibility that some motorists will follow violators through the crossing in a steady stream, defeating the intended warning. Accordingly, where traffic channelization is not provided to prevent this pattern, we assume a lower effectiveness rate. FRA estimates that four-quadrant gates with presence detection, but without traffic channelization, would have an effectiveness rate of approximately .77.

By contrast, where four-quadrant gates are supplemented by lengthy traffic channelization to discourage the violation minded driver, the use of presence detection should make little or no difference in the safety effectiveness of the arrangement. The North Carolina demonstration showed that, when the four-quadrant gate installation was supplemented by medians (channelization devices) of at least 50 feet on each highway approach, the crossing experienced a 97 percent drop in violations. Again applying a discount to this illustration, FRA estimates an effectiveness rate of .92 for four-quadrant gates with traffic channelization of reasonable length.

It is important to re-emphasize that use of data regarding violations to estimate collision risk itself involves some hazard that effectiveness will be over- or under-estimated. FRA believes that the likelihood is that these estimates for four-quadrant gates are conservative, not only because of the excellent effectiveness of in-service four-quadrant installations, but also because of the North Carolina findings. In the North Carolina observations, as the number of violations decreased, the average number of seconds prior to arrival of the train also significantly increased (predicting that collisions might fall off at a faster rate than violations). The effectiveness of four-quadrant gates may thus be higher than the range stated above, both with and without medians and with presence detection.

It is also true that a variety of applications for these systems may result in a variety of effectiveness rates.

3. Gates With Medians or Channelization Devices

Keeping highway traffic on both highway approaches to a public highway-rail grade crossing in the proper lane denies the highway user the option of circumventing gates in the approach lanes by switching into the opposing (oncoming) traffic lane in order to drive around a lowered gate to cross the tracks.

FRA therefore is requiring that the following conditions be met.

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) Medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm. Driveways for private, residential properties (up to four units) are not considered intersections in calculating the required median length.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated. Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of ''no left turn'' signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority cannot comply with this 60 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), ''Public authority application to FRA.'' During the comment period FRA was made aware of many circumstances in which roadways parallel to the tracks would not physically accommodate a 60 feet median. It was always FRA's intent to allow public authorities to apply to FRA for consideration of SSMs that do not fully comply with the provisions of Appendix A. There should be many circumstances in which medians or traffic channelization of less that 60 feet in length may sufficiently reduce risk in order to permit the creation of a quiet zone. FRA will review such applications and give them due consideration.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices. FRA has been made aware that constant warning devices may not work properly under certain circumstances such as in electrified territory. If conditions exist that would not allow constant warning time systems to work as intended, other appropriate types of control circuitry may be used. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

e. Crossing warning systems must be equipped with power-out indicators. Power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, power-out indicators are required.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

Effectiveness:

FRA estimates that channelization devices have an effectiveness of .75 and medians with non-traversable curbs with or without channelization devices have an effectiveness of .80. The installation of traffic channelization devices as part of North Carolina's ''Sealed Corridor'' demonstration project provides empirical data upon which to base an effectiveness rate. Traffic channelization devices were installed at the Sugar Creek Road crossing in Charlotte, NC. Prior to the traffic channelization devices being installed, the Norfolk Southern Corporation and NCDOT counted the number of motorists going around the crossing gates for twenty weeks. This data established a baseline traffic violation rate. The number of violations were then counted after installation of the channelization devices. Comparing the number of violations before and after the grade crossing treatment showed that violations decreased by 77 percent. As in the NPRM, FRA discounts this rate slightly for the novelty effect that may occur immediately following installation of the treatment and to account for the added safety benefit of the horn which was sounding during the study. FRA therefore assigns an effectiveness rate of 75 percent for traffic channelization devices. FRA reasons that medians with non-traversable curbs present a greater deterrence, and estimates their effectiveness rate at 80 percent. This reasoning is supported by data collected in Spokane County, WA where non-traversable medians reduced violations at the University Road crossing by 92 percent. The unusual physical and operating characteristics of the crossing are sufficiently different from an average crossing that FRA believes that the effectiveness rate in this study should be discounted when determining an effectiveness rate for a national rule.

4. One Way Street With Gates

This installation consists of one way streets with gates installed so that all approaching highway lanes are completely blocked. FRA is requiring that the following conditions are met.

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position should be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices. FRA has been made aware that constant warning devices may not work properly under certain circumstance such as in electrified territory. If conditions exist that would not allow constant warning time systems to work as intended, other appropriate types of control circuitry may be used. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

d. Crossing warning systems must be equipped with power-out indicators. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

Effectiveness: FRA does not have an empirical data source for an effectiveness rate for one way streets with gates. FRA reasons that as this SSM will fully block approach lanes to the highway rail crossing, it's effectiveness should be similar to other measures that physically prevent a motorist from entering a crossing when

the gates are activated. In this respect, one way streets with gates functions like four quadrant gates without medians, and FRA estimates an effectiveness rate of 82 percent.

Appendix B—Alternative Safety Measures

Introduction

Section 222.39(b) provides that a public authority may apply to FRA for approval of a quiet zone that does not meet the standards for public authority designation under § 222.39(a). Under § 222.39(b) a quiet zone application may be presented to FRA for consideration. Public authority application provides two unique benefits towards the creation of a quiet zone. The first benefit is the ability to use SSMs that may not conform to all of the requirements in Appendix A. FRA received many comments indicating that traffic channelization would not be practical due to parallel roadways that were closer than 60 feet. Under Appendix B, short traffic channelization devices may be considered. The second benefit is the ability to use programmed law enforcement, public education and awareness programs and photo enforcement to reduce risk and to compensate for the loss of the train horn. A public authority must receive written FRA approval of its quiet zone application prior to the silencing of train horns.

As with quiet zones created using the public authority designation method, credit will be given for closing of public highway-rail grade crossings. It will be necessary to adjust the baseline severity risk index at other crossings by increasing traffic counts at neighboring crossings as input data to the severity risk formula. If nearby grade separations are expected to carry some or all of the traffic, it will not be necessary. FRA Regional Managers for Grade Crossing Safety will be available to assist in performing the required analysis.

Appendix B addresses two types of ASMs-modified SSMs and non-engineering ASMs. Modified SSMs are SSMs that do no fully comply with the provisions listed in Appendix A. Depending on the resulting configuration, modified SSMs may still provide a substantial reduction in risk and can contribute to the creation of quiet zones. Non-engineering ASMs are programmed law enforcement, public education and awareness programs; and photo enforcement efforts that may be used to reduce risk in the creation of a quiet zone. It should be noted that if non-engineering ASMs are proposed, the application must demonstrate their effectiveness through the collection and analysis of data collected at the crossings. Periodic monitoring will be required throughout the existence of the quiet zone in order to show that the ASM is still effective. The public authority must receive written FRA approval of the quiet zone application prior to the silencing of train horns. The public authority is strongly encouraged to submit the application to FRA for review and comment before the Appendix B treatments are initiated to ensure that the proposed modified SSMs and/or non-engineering ASMs will meet with FRA's approval. If non-engineering ASMs are proposed, the public authority may wish to confirm with FRA that the sampling methods are appropriate. Submitting the application for review prior to implementation will enable FRA to provide comments to assist the public authority in developing a quiet zone plan that will be acceptable.

Modified SSMs

a. If there are unique circumstances pertaining to a specific crossing or number of crossings which prevent the SSMs from being fully compliant with all of the SSM requirements listed in Appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified, will be treated as an ASM under this Appendix B, and not as a SSM under Appendix A, so that its safety effects may be evaluated. By using modified SSMs, a locality will be able to tailor the use and application of various SSM-types of applications to a specific set of circumstances (*e.g.* being able to use traffic channelization devices of less than 60 feet in length). Thus, a locality may propose a quiet zone that contains modified SSMs at a number of crossings, that due to specific circumstances, could not have been treated with an Appendix A SSM and would have to be omitted from the proposed quiet zone. FRA will review the proposed quiet zone, and will approve the proposal if it finds that the Quiet Zone Risk Index is reduced to the level that would be expected with sounding of the train horns or to the Nationwide Significant Risk Threshold.

b. Estimates of effectiveness may be proposed based upon adjustments from the effectiveness levels provided in Appendix A or from actual field data derived from the crossing sites. The application should provide an estimate for the effectiveness of the proposed ASM and the rationale for the estimate. For example, in Appendix A the effectiveness of a 60 foot traffic channelization device is .75. A public authority may propose for consideration that an effectiveness rate of .60 for a traffic channelization device that is 45 feet in length would be appropriate. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from actual experience under the rule.

c. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone. SSMs that are listed in Appendix A may be used for purposes of modified SSMs. If one or more of the requirements associated with an SSM as listed in Appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. These SSMs include: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s). A discussion of these safety measures may be found in the discussion of Appendix A.

Non-Engineering ASMs

The following non-engineering ASMs may be used in the creation of a Quiet Zone. The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and provision for dealing with an unacceptable effectiveness rate are provided in paragraph b.

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness option.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s).

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s).

b. A sustainable public education and awareness program must be defined, established and continued concurrent with continued monitoring. This program shall be provided and supported primarily through local resources. It is critical that programs proposed under this appendix represent valid new increments of effort generated from the local level where quiet zone benefits will accrue.

3. Photo Enforcement: This alternative entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Required:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law.

b. Sanction includes sufficient minimum fine (*e.g.*, $100 for a first offense, ''points'' toward license suspension or revocation) to deter violations.

c. Means to reliably detect violations (*e.g.*, loop detectors, video imaging technology).

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note to d.: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations, as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement.

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns.

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s).

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

The effectiveness of non-engineering ASMs will be determined as follows:

1. The first step in assessing the effectiveness of an ASM is to establish quarterly (3 months) baseline violation rates for each of the crossings. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (*e.g.* inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating. In the event that data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: sampling on certain days of the week but not others, sampling during certain times of the day but not others, sampling immediately after implementation of an ASM while the public is still going through an adjustment period, or applying one sample method for the baseline rate and another for the new rate. One possible approach to avoid sampling bias would be to break a three-month observation period into many time slots and then randomly selecting these slots for sampling. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods. The application should include enough detail on the method used to collect and assess the data to insure that the results will provide a statistically valid result. While not it is not mandatory, public authorities are encouraged to provide FRA with its sampling methodology for comment prior to actually collecting the data. This will enable FRA to provide comments to ensure that the sampling methodology is adequate.

2. The ASM should then be initiated for each crossing in the proposed quiet zone that is to be treated with programmed enforcement or education. During this time frame, train horns are still being sounded. Train horns will not be silenced until the application has been formally approved by FRA.

3. In the calendar quarter following initiation, a new violation rate should be determined (using the same methodology as in paragraph a) and compared to the baseline violation rate for each crossing treated with an ASM. The violation rate reduction for each crossing should then be determined by the following formula:

Violation rate reduction = (new rate—baseline rate)/baseline rate

Example: The baseline rate for a crossing was 60 violations per 100 gate activations. After implementation of the ASM, the new violation rate for the next quarter was 20 violations per 100 gate activations. The violation rate reduction would be 66 percent (.66).

4. The effectiveness rate for each crossing is then determined by multiplying the violation rate reduction by .78. This converts the violation rate reduction to the collision reduction rate which is the effectiveness rate. The effectiveness rate of the ASM would then be used in the calculation of the Quiet Zone Risk Index.

Example: In the above example, the violation rate reduction of .66 would be multiplied by .78 which results in an effectiveness rate of .51.

5. Using the effectiveness rates for each crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level below the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application, the public authority may then proceed with notifications and implementation of the quiet zone.

6. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate used to determine the effectiveness rate that was approved by FRA,

violation rates may be monitored for one quarter per year.

Example: Continuing with the above example, the periodic monitoring during the five years following implementation of the quiet zone showed that the violation rate never exceeded 20 violations per 100 gate activations. It then would only be necessary to monitor every fourth quarter thereafter.

7. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Example: Three years after initiating the quiet zone cited above, the violation rate was 30 violations per 100 gate activations. The quiet zone continues with monitoring. In the next quarter, the violation rate was still 30 violations per 100 gate activations. When compared to the original baseline violation rate, this represents a violation rate reduction of 50 percent. The new effectiveness rate is calculated by multiplying .50 by .78. The new effectiveness rate of .39 would then be used in the calculation of a new Quiet Zone Risk thnsp; Index. If the new Quiet Zone Risk Index is no longer below the Nationwide Significant Risk Threshold or no longer fully compensates for the loss of the train horn, the provisions of 222.51 would then apply.

Section 229.129 Audible Warning Device

Paragraph (a) of this section requires that each lead locomotive be provided with an audible warning device that produces a minimum sound level of 96dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive. The phrase ''usual position during operation of the locomotive'' replaces ''normal position in the cab.'' This change, which was not proposed in the NPRM, will bring this section into conformity with the first sentence of § 229.53 which refers to the location of the various brake gauges used by a locomotive engineer. FRA removed § 229.53's reference to ''normal position in the cab'' in the final rule revising the regulations governing braking systems and equipment used in freight and other non-passenger railroad train operations. See 66 FR 4104, January 17, 2001. FRA, in its response to petitions for reconsideration, stated that the phrase, ''normal position in the cab'' is unnecessary and antiquated. FRA stated that ''FRA's intent when removing the language was to ensure that the gauges used by an engineer to aid in the control or braking of a train or locomotive were located so as to be read from the engineer's usual position when operating the locomotive, whether that be in the cab of the locomotive or elsewhere. FRA's intent when issuing the final rule was to accommodate and facilitate advanced technologies and designs.'' *See* 67 FR 17562, April 10, 2002. Because the rationale for the language change as it pertains to brake gauges applies equally well to the location of horn controls, FRA has modified § 229.129 to be consistent with § 229.53. Because this change was not proposed in the NPRM, interested parties are encouraged to provide comment on this aspect of the interim final rule. FRA will take into consideration comments when thnsp; issuing the final rule.

Paragraph (b) addresses the schedule of testing to determine if locomotive horns are in compliance with this section. Locomotives built on or after December 18, 2004, must be tested and brought into compliance with this section prior to being placed in service. Locomotives built before December 18, 2004, have five years from the date of this notice in which to be tested. Thus they must be tested and brought into compliance with this section by December 18, 2008. Additionally, horns must be tested and brought into compliance with this section whenever a locomotive is rebuilt (as determined in accordance with 49 CFR 232.50).

Paragraph (c) specifies the testing requirements and measurement procedures. The paragraph also specifies that the railroad must maintain records sufficient to show the date, manner and result of locomotive horn testing conducted in compliance with this part.

Paragraph (d) provides that this section of part 229 addressing audible warning devices does not apply to rapid transit operations which are otherwise subject to part 229. Rapid transit operations which are subject to part 222 solely because they share track or rail corridors at public highway-rail crossings with general system railroads are thus not subject to this section. While such operations are subject to all provisions of part 222, including the requirement to sound the horn at public rail grade crossings which they share with general system railroads, and to silence the horn within quiet zones which include such shared crossings, they are not subject to § 229.129's requirements, including those regarding locomotive horn volume and testing.

17. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA has conducted a Regulatory Evaluation of this Interim Final Rule in accordance with Executive Order 12866. A copy of this document has been placed in the docket for this rulemaking. Following is a summary of the findings.

FRA identified 1,988 existing whistle ban or no-horn crossings that would qualify for inclusion in Pre-Rule Quiet Zones. FRA also identified 442 potential New Quiet Zone crossings. Using information available about the crossing characteristics and the number of persons that would be or currently are severely affected by the sounding of train horns, FRA estimated the costs and benefits of the actions that communities would take in response to this rule. FRA believes that many communities will take advantage of the many options available to establish quiet zones. FRA also estimated the costs associated with the maximum horn sound level requirements. Some existing whistle ban crossings may not be included in quiet zones.

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the Interim Final Rule using a 7 percent discount rate. Given the high prevalence of existing whistle ban crossings in the Chicago Region [15] and the significant level of interest commenters from this area have shown regarding this rulemaking, costs are presented separately from the rest of the nation where applicable.

[15] The Chicago area is comprised of the following six counties: Cook, Du Page, Kane, Lake, McHenry, and Will.

TOTAL TWENTY-YEAR COSTS (PV, 7%)

	Nationwide	Chicago	Rest of nation
Maximum Horn Sound Level	$2,902,478	(2)	(2)
Relocations Due to Horn Noise [1]	1,724,590	$47,927	$1,676,663
Establish/Maintain Pre-Rule Quiet Zones	15,275,946	4,008,013	11,267,933
Establish/Maintain New Quiet Zones	21,501,796	(2)	(2)
FRA Administrative Costs	25,426	(2)	(2)

[1] Due to resumption of horn sounding.
[2] Not applicable.

Total Twenty-Year Costs associated with implementation of this rule are estimated to be $41,430,236 (PV, 20 Years, 7%).

In general there has been a downward trend in collisions at grade crossings nationwide due to the implementation of various private and public safety initiatives such as Operation Lifesaver and other public education and awareness campaigns. Costs presented in this analysis may be overstated to the extent that such initiatives would lead to the eventual implementation of some of the same or equivalent safety measures that this rule requires for the establishment of quiet zones. In such cases, this rule may be merely accelerating implementation and the rate of expenditures.

The direct safety benefit of this interim final rule is the reduction in casualties that result from collisions between trains and highway users at public at-grade highway-rail crossings. Implementation of this rule will ensure that (1) locomotive horns are sounded to warn highway users of approaching trains; or (2) rail corridors where train horns do not sound will have a level of risk that is no higher than the average risk level at gated crossings nationwide where locomotive horns are sounded regularly; or (3) the effectiveness of horns is compensated for in rail corridors where train horns do not sound.

FRA has reviewed trends in collision rates for whistle ban crossings going back to 1980 and believes that collision rates over the twenty-years that this analysis covers will be no higher than 4 percent. The following table presents anticipated twenty-year safety benefits expressed in monetary terms assuming that collisions decline at an average rate of 4 percent annually and using a 7 percent discount rate.

TOTAL TWENTY-YEAR SAFETY BENEFITS MONETIZED (PV, 7%)

[Declining collision rate (4% annual decline)]

Casualties prevented	Nationwide	Chicago	Rest of nation
Cancellation of W-Bans	$6,102,371	$291,582	$5,810,789
Pre-Rule Quiet Zones:	48,794,232	22,371,706	26,422,526
New Quiet Zones	21,976,553	(1)	(1)
Total	76,873,156	(1)	(1)

[1] Not applicable.

In terms of collisions and casualties, over the next twenty years, FRA anticipates implementation of this rule will result in the prevention of 123 collisions, 13 fatalities, and 60 injuries.

In addition to the prevention of casualties, FRA estimates that, over the next twenty years, this collision prevention will result in a reduction of approximately $400,000 in highway vehicle, railroad equipment, and track damage.

This analysis covers the first twenty years of the rule and includes some compliance costs that will be incurred towards the end of the period. Unlike the benefits associated with costs incurred in the early years of the rule, much of the twenty-year stream of benefits associated with these costs is not captured in this analysis. Safety benefits are understated to the extent that many years of safety benefits resulting from safety measures implemented in out-years are not included.

Some of the unquantified benefits of this interim final rule include reductions in freight and passenger train delays, both of which can be very significant when grade crossing collisions occur, and collision investigation efforts. Although these benefits are not quantified in this analysis, their monetary value is significant.

Because such events are rare, FRA has not attempted to estimate the value of avoiding events in which a highway-rail collision results in a derailment, with harm to persons on the train or release of hazardous materials into the community.

Maximum horn sound level requirements will limit community disruption by not allowing horns to be sounded any louder than necessary to provide motorists with adequate warning of a train's approach. The benefit in noise reduction due to this change in maximum horn loudness is not readily quantifiable.

Another unquantified benefit of this rule is elimination of some locomotive horn noise disruption to some railroad employees and those who may reside near industrial areas served by railroads. Locomotive horns will no longer have to be sounded at individual highway-rail grade crossings at which the maximum authorized operating speed for that segment of track is 15 miles per hour or less and properly equipped flaggers (as defined in by 49 CFR 234.5, but who for purposes of this rule can also be crew members) provide warning to motorists. This rule will allow engineers, who were probably already exercising some level of discretion as to the duration and sound level of locomotive horn sounding, to stop sounding the horn under these circumstances at no additional cost.

This analysis does not quantify the benefit of eliminating community disruption caused by the sounding of train horns, nor does it quantify costs from increased noise at crossings where

horns will sound where they were previously silent.

In an effort to determine the costs to a community associated with the locomotive horn, FRA examined the effects of sounding of locomotive horns on property values. This effort was based on the assumption that property values reflect concerns of property owners that are often subjective and otherwise difficult to quantify. For a full discussion of the effects of sounding locomotive horns on property values, see Appendix A to the Regulatory Evaluation.

Research shows that residential property markets are influenced by a variety of factors including structural features of the property, local fiscal conditions, and neighborhood characteristics. Hedonic housing price models treat a property as a bundle of characteristics, with each individual characteristic generating an influence on the price of the property. For example, additional structural characteristics such as bathrooms, bedrooms, interior or exterior square footage increase the value of residential properties. Likewise, neighborhood characteristics are expected to influence property prices. For example, homes that are in relatively close proximity to noxious activities such as hazardous waste sites, incinerators, etc. have been shown to have lower values, other things equal. Thus, a carefully designed hedonic model can be used to implicitly value locational attributes that have no explicit market price.

The effects of the sounding of locomotive horns on property values have been studied recently in response to the NPRM. While initial results are available, unfortunately they are not conclusive. David E. Clark performed one study for the FRA, and Schwieterman and Baden of the Chaddick Institute performed the other. According to Clark, the study performed for FRA was ''just a first step in understanding how train whistles influence local property values.'' Schwieterman and Baden of the Chaddick Institute emphasize that their ''report is a preliminary assessment of a complex issue. Some of our findings are speculative in nature.'' Those who have studied the issue agree that further study is needed to reach a better understanding of the true effects of locomotive horn sounding on property values. Clark concluded that there is little indication that the decision of a railroad to ignore whistle bans (and thus sound the locomotive horn) had any permanent and appreciable influence on the housing values in the three communities analyzed. Clark offers two explanations for the lack of effect on property values. First, those buying property within the audible range of a highway-rail grade crossing likely consider the possibility that train whistles may be sounded at the crossing in the future. Second, the railroad's action generated dynamic changes in the composition of residents that served to mitigate the initial impact of the action. Residents most sensitive to the sounding of locomotive horns moved away and were replaced with those less sensitive to such sounding.

The Chaddick Institute study evaluated the probable costs of the noise generated by locomotive horns at grade crossings in the Chicago area. The study concluded that the region would experience significant losses in property value from sounding of horns at crossings currently subject to whistle bans. The study also concluded that even if property values do not fall, homeowners that are forced to move away may incur other real economic costs. For the reasons discussed in Appendix A to the Regulatory Evaluation, FRA has concluded that it is not likely that the overall costs associated with sounding the horns where they are not currently sounded will be as high as the Chaddick Institute study concludes.

Although there are airport and highway hedonic property value studies, FRA has not applied them to grade crossings for a number of reasons. The types of noise experienced by residents near highways and airports can be different from that experienced by residents near highway-rail grade crossings. Highways and airports where noise is an issue have higher daily volumes of motor vehicle and aircraft traffic than grade crossings with whistle bans. The noise produced by locomotive horns at crossings is also generally more intermittent than that produced at airports and highways.

The effect of highways and airports on nearby property values can also be very different than that of highway-rail at-grade crossings on nearby property values. For instance, airports are a source of employment for residents in the community. Although airport employees may not desire to reside in properties immediately adjacent to airports, they probably want to reside relatively close by. Few highway users desire to reside in properties immediately adjacent to highways, however many probably want to reside close enough to have easy access to highways. Such situations may greatly influence the magnitude of difference between property values of residences immediately adjacent to highways and airports compared to property values of residences that are still very close to highways and airports yet not adjacent. Since there generally is no incentive to residing near highway-rail at-grade crossings (unless there happens to be a commuter rail station nearby) the difference in property values between residences immediately adjacent to grade crossings and those a little further away is probably not as great.

Studies of airport and highway noise compare property values of residences adjacent to the source of noise to property values of residences that are near but not adjacent to the source of noise. To isolate the effect of the noise itself and thereby make these studies more relevant to the highway-rail grade crossing context, the effect of the incentive for residing nearby, versus adjacent to, would have to be removed from the studies of airport and highway noise. Given the differences in (1) types of noise produced by highway vehicles and aircraft versus locomotive horns and (2) effects of highways and airports on nearby property values versus effects of grade crossings on property values, FRA believes that results from hedonic studies of airport and highway noises on property values are not directly transferable to locomotive horn noise effects on property values.

It is important to note that since this rule is permissive as to the establishment of quiet zones, communities will establish quiet zones to the extent that the perceived benefit of elimination of the train horn disruption coupled with the safety benefit of any safety enhancements exceeds the costs of compliance associated with the requirements for establishing New Quiet Zones.

FRA is confident that the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society by this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Data available to FRA indicates that this rule may have minimal economic impact on a substantial number of small entities (railroads) and possibly a significant economic impact on a few small entities (government jurisdictions and small businesses). However, there is no indication that this rule will have a significant economic impact on a substantial number of small entities. The Small Business Administration

(SBA) did not submit comments to the docket for this rulemaking in response to the Initial Regulatory Flexibility Assessment that accompanied the NPRM. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FRA has performed a Regulatory Flexibility Assessment (RFA) on small entities that potentially can be affected by this interim final rule. The RFA is summarized in this preamble as required by the Regulatory Flexibility Act. The full RFA is included in the Regulatory Evaluation, which is available in the public docket of this proceeding.

This is essentially a safety rule that implements as well as minimizes the potential negative impacts of a Congressional mandate to blow train whistles and horns at all public crossings. Some communities believe that the sounding of train whistles at every crossing is excessive and an infringement on community quality of life, and therefore have enacted ''whistle bans'' that prevent the trains from sounding their whistles entirely, or during particular times (usually at night). Some communities would like to establish ''quiet zones'' where train horns would not be routinely sounded, but are awaiting issuance of this rule to do so. FRA is concerned that with the increased risk at grade crossings where train whistles are not sounded, or another means of warning utilized, collisions and casualties may increase significantly. The rule contains low risk based provisions for communities to establish quiet zones. Some crossing corridors may already be at risk levels that are permissible under this rule and would not need to reduce risk levels any further to establish quiet zones. Otherwise, communities establishing Pre-Rule Quiet Zones may implement sufficient safety measures along whistle-ban corridors to reduce risk to permissible levels. In addition to having permissible risk levels, all crossings in New Quiet Zones will have to be equipped with gates and flashing lights. If a community elects to simply follow the mandate, horn sounding will resume and there will be a noise impact on small businesses that exist along crossings where horns are not currently routinely sounded. If a community elects to implement sufficient safety measures to comply with the requirements for establishing a quiet zone, then the governmental jurisdiction will be impacted by the cost of such program or system. To the extent that potential quiet zone crossing corridors already have average risk levels permissible under this rule, and, in the case of New Quiet Zones, every crossing is equipped with gates and flashing lights, communities will only incur administrative costs associated with establishing and maintaining quiet zones.

The costs of implementing this interim final rule will predominately be on the governmental jurisdictions of communities some of which are ''small governmental jurisdictions.'' As defined by the SBA this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. The most significant impacts from this rule will be on about 260 governmental jurisdictions whose communities currently have either formal or informal whistle bans in place. FRA estimates that approximately 70 percent (*i.e.* 193 communities) of these governmental jurisdictions are considered to be small entities.

FRA has recently published final a policy which establishes ''small entity'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. As defined by 49 CFR 1201.1–1, Class III railroads are those railroads who have annual operating revenues of $20 million per year or less. Hazardous material shippers or contractors that meet this income level will also be considered as small entities. FRA is using this definition of small entity for this rulemaking. The RFA believes that approximately 640 small railroads would be minimally impacted by train horn sound level testing requirements contained in this rule. In addition, some small businesses that operate along or nearby rail lines that currently have whistle bans in place that potentially may not after the implementation of this rule, could be moderately impacted.

Alternative options for complying with this rule include allowing the train whistle to be blown. This alternative has no direct costs associated with it for the governmental jurisdiction. Other alternatives include ''gates with median barriers'' which are estimated to cost $13,000 for a mountable curb with frangible delineators and ''Photo enforcement'' which is estimated to cost $28,000–$65,500 per crossing, and have annual maintenance costs of $6,600–$24,000 per crossing. Finally, FRA has not limited compliance to the lists provided in Appendix A or Appendix B of the rule. The rule provides for supplementary safety measures that might be unique or different. For such an alternative, an analysis would have to accompany the option that would demonstrate that the number of motorists that violate the crossing is equivalent of less than that of blowing the whistle. FRA intends to rely on the creativity of communities to formulate solutions which will work for that community.

FRA does not know how many small businesses are located within a distance of the affected highway-rail crossings where the noise from the whistle blowing could be considered to be nuisance and bad for business. Concerns have been advanced by owners and operators of hotels, motels and some other establishments as a result of numerous town meetings and other outreach sessions in which FRA has participated during development of this rule. If supplementary safety measures are implemented to create a quiet zone then such small entities should not be impacted. FRA held 12 public hearings nationwide following issuance of the NPRM and requested comments to the docket from small businesses that feel they will be adversely impacted by the requirements contained in the NPRM. FRA received no comments in response.

C. Paperwork Reduction Act

The information collection requirements in this interim final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

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CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
222.11 - Penalties	400 communities	5 false reports/rcd	2 hours	10 hours	$340
222.15 - Petitions for Waivers	400 communities	10 petitions	4 hours	40 hours	$13,600
222.39 - Establishment of Quiet Zones - Public Authority Application to FRA	400 public authorities	400 Applications	80 hours	32,000 hours	$1,984,000
222.41 - Pre-Rule Quiet Zones Which Qualify For Automatic Approval	302 communities/Pub. Auth.	1,812 notifications	5 hours	9,060 hours	$561,720
- Public Authority Certification	302 communities/Pub. Auth.	302 Certifications	35 hours	10,570 hours	$655,340
- Grade Crossing Inventory Forms	302 communities/Pub. Auth.	1,026 Forms	1 hour	1,026 hours	$63,612
Pre-Rule Quiet Zones Which Do Not Qualify For Automatic Approval	103 communities	103 certifications	35 hours	3,605 hours	$223,510
- Updated Crossing Inventory Forms	103 communities	274 Forms	1 hour	274 hours	$16,988
- Detailed Plans By Public Authority	103 communities/Pub. Auth.	90 Plans	80 hours	7,200 hours	$446,400
- Implementation Plan By State Agencies	5 State Agencies	5 Plans	100 hours	500 hours	$31,000

222.43 - Notice and Other Information Required to Establish a Quiet Zone	Covered Under Sec. 222.41	Covered Under Sec. 222.41	Covered Under Sec. 222.41	Covered Under Sec. 222.41	Covered Under Sec. 222.41
222.47 - Periodic Updates -Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing	400 Public Authorities	Affirmations + Copies	30 minutes + 2 min	245 hours	$15,190
- Updated Crossing Inventory Forms	400 Public Authorities	1,875 Forms	30 minutes	938 hours	$58,156
222.49 - New Quiet Zone - Annual Risk Review -Actions Taken By Authority to Retain Quiet Zone	9 Public Authorities	2 Commitments	5 hours	10 hours	$620
-Pre-Rule Quiet Zone - Review at FRA's Initiative	5 Public Authorities	100 Comments	30 minutes	50 hours	$3,100
- Notification or Termination	5 Public Authorities	30 Notifications	30 minutes	15 hours	$930

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
222.55 - Approval of New SSMs or ASMs	400 Parties	1 Letter	30 minutes	1 hour	$62
- Opportunity to Comment	400 Parties	5 Comments	30 minutes	3 hours	$186
- Application For Approval of New SSMs or ASMs	400 Parties	1 Letter	30 minutes	1 hour	$62
222.57 - Review of Assoc. Administrator's Actions					
- Petitions For Reconsideration	400 Pub. Authorities/Parties	1 Petition	1 hour	1 hour	$62
- Additional Documents	400 Pub. Authorities/Parties	10 Documents	2 hours	20 hours	$1,240
- Requests For Informal Hearing	400 Pub. Authorities/Parties	5 Letters	30 minutes	3 hours	$186
229.129 - Audible Warning Devices					
- Locomotive Horn Testing - Records	685 Railroads	23,230 Records	1 hour	23,230 hours	$789,820
- Re-Tests	685 Railroads	650 Records	1 hour	650 hours	$22,100

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All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and

reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than [60 days after the date of publication]. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17, 1120 Vermont Ave., NW., MS–17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this interim final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. FRA has prepared a final environmental impact statement (FEIS) analyzing the environmental impacts associated with this rule. The FEIS is being issued concurrently with this interim final rule. The principal environmental effect and potentially significant impact of the interim final rule is reduced horn noise in aggregate at approximately 150,000 public at-grade crossings and additional horn noise at some crossings where whistle bans currently exist.

The application of the requirement to provide an audible warning at existing whistle ban crossings has been substantially modified in the interim final rule. Provisions have been made that would qualify certain existing whistle bans for quiet zone status according to their risk levels. This is expected to result in the continued absence of train horns at many Pre-Rule Quiet Zones and would reduce the potential for additional horn noise impacts. Train horns will continue to be silenced at other Pre-Rule Quiet Zones through implementation of supplemental or alternative safety measures. Thus, additional horn noise impact is unlikely to approach the levels that would occur if horns were to sound where all whistle bans now exist.

This rule contains provisions that would reduce existing train horn noise exposure over time. The provision limiting the distance for regular horn sounding would reduce the total amount of horn noise generated. This provision would reduce existing horn noise impacts by approximately 27 percent. The provision for a maximum horn sound level would reduce horn noise for some particularly loud locomotives and would reduce existing horn noise impacts by approximately 14 percent. It is estimated that the combined effect of these two provisions would reduce horn noise impacts by approximately 38 percent.

Finally, the interim final rule contains provisions that would make it possible for the creation of quiet zones in many communities that are currently exposed to train horn noise. The potential benefit from these New Quiet Zones is indeterminate, as it is impossible to determine prospectively the number of New Quiet Zones and their establishment date; however, FRA's best estimate is that there will likely be approximately 107 New Quiet Zones.

Copies of the FEIS are being distributed to organizations and individuals who filed comments on the Draft environmental impact statement. The FEIS is also available on FRA's Web site (*www.fra.dot.gov*), or from the FRA at the following address: Office of Safety, FRA, 1120 Vermont Avenue, NW, (Mail Stop 25), Washington, DC 20590.

E. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a Federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. * * *''

FRA has complied with E.O. 13132 in issuing this rule. FRA consulted extensively with State and local officials prior to issuance of the NPRM, and we have taken very seriously the concerns and views expressed by State and local officials as expressed in written comments and testimony at the various public hearings throughout the country. FRA staff provided briefings to many State and local officials and organizations during the comment period to encourage full public participation in this rulemaking. As discussed earlier in this preamble, because of the great interest in this subject throughout various areas of the country, FRA was involved in an extensive outreach program to inform communities which presently have whistle bans of the effect of the Act and the regulatory process. Since the passage of the Act, FRA headquarters and regional staff has met with a large number of local officials. FRA also held a number of public meetings to discuss the issues and to receive information from the public. In addition to local citizens, both local and State officials attended and participated in the public meetings. Additionally, FRA took the unusual step of establishing a public docket before formal initiation of rulemaking proceedings in order to

enable citizens and local officials to comment on how FRA might implement the Act and to provide insight to FRA. FRA received comments from representatives of Portland, Maine; Maine Department of Transportation; Acton, Massachusetts; Wisconsin's Office of the Commissioner of Railroads; a Wisconsin State representative; a Massachusetts State senator; the Town of Ashland, Massachusetts; Bellevue, Iowa; and the mayor of Batavia, Illinois.

Since passage of the Act in 1994, FRA has consulted and briefed representatives of the American Association of State Highway and Transportation Officials (AASHTO), the National League of Cities, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, and others. Additionally we have provided extensive written information to all United States Senators and a large number of Representatives with the expectation that the information would be shared with interested local officials and constituents.

Prior to issuance of the NPRM, FRA had been in close contact with, and has received many comments from Chicago area municipal groups representing suburban areas in which, for the most part, locomotive horns are not routinely sounded. The Chicago area Council of Mayors, which represents over 200 cities and villages with over 4 million residents outside of Chicago, provided valuable information to FRA as did the West Central Municipal Conference and the West Suburban Mass Transit District, both of suburban Chicago.

Another association of suburban Chicago local governments, the DuPage [County] Mayors and Managers Conference, provided comments and information. Additionally, FRA officials met with many Members of Congress, who have invited FRA to their districts and have provided citizens and local officials with the opportunity to express their views on this rulemaking process. These exchanges, and others conducted directly through FRA's regional crossing managers, have been very valuable in identifying the need for flexibility in preparing the proposed rule.

Under 49 U.S.C. 20106, issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce. For further discussion of the effect of this rule on State and local laws and ordinances, *see* § 222.7 and its accompanying discussion.

As noted, this rulemaking is required by 49 U.S.C. 20153. The statute both requires that the Department issue this rule and sets out clear guidance as to the structure of such rule. The statute clearly and unambiguously requires the Department to issue rules requiring locomotive horns to be sounded at every public grade crossing. The Department has no discretion in as to this aspect of the rule. The statute also makes clear that the Federal government must have a leading role in establishing the framework for providing exceptions to the requirement that horns sound at every public crossing. While some States and communities expressed opposition to Federal involvement in this area which historically has been subject to State regulation, the majority of State and local community commenters recognized and accepted the statutorily required Federal involvement. Of concern to many of these commenters, however, was the issue as to whether States or local communities should have primary responsibility for creation of quiet zones. As further discussed in the section-by-section analysis of § 222.37, ''Who may establish a quiet zone?'', States generally felt that they should have a primary role in establishing quiet zones and in administering a quiet zone. Comments from local governments tended to support the contrary view that local political subdivisions should establish quiet zones. A review of § 20153 indicates a clear Congressional preference that decision-makers be local authorities. This Interim Final Rule provides non-Federal parties extensive involvement in decision-making pertaining to the creation of quiet zones. However, given the nature of the competing interests of State and local governments in this area, FRA could not fully meet the concerns of both groups. For the reasons detailed in the above section-by-section analysis, the concerns of local communities have been substantially met.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The rule issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Interim Final Rule in accordance with Executive Order 13211 and has determined that this Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

18. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety.

■ In consideration of the foregoing, FRA is amending chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

■ 1. Part 222 is added to read as follows:

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

Subpart A—General

Subpart B—Use of Locomotive Horns

Subpart C—Exceptions to the Use of the Locomotive Horn

Silenced Horns at Individual Crossings

Silenced Horns at Groups of Crossings—Quiet Zones

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

Subpart A—General

§ 222.1 What is the purpose of this regulation?

The purpose of this part is to provide for safety at public highway-rail grade crossings by requiring locomotive horn use at public highway-rail grade crossings except in quiet zones established and maintained in accordance with this part.

§ 222.3 What areas does this regulation cover?

This part prescribes standards for sounding locomotive horns when locomotives approach and pass through public highway-rail grade crossings. This part also provides standards for the creation and maintenance of quiet zones within which locomotive horns need not be sounded.

§ 222.5 What railroads does this regulation apply to?

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Passenger railroads that operate only on track which is not part of the general railroad system of transportation and which operate at a maximum speed of 15 miles per hour; and

(c) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation. *See* 49 CFR part 209, appendix A for the definitive statement of the meaning of the preceding sentence.

§ 222.7 What is this regulation's effect on State and local laws and ordinances?

(a) Under 49 U.S.C. 20106, issuance of this part preempts any State law, rule, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States government; and does not unreasonably burden interstate commerce. However, except as provided in § 222.25, this part does not cover the subject matter of the routine sounding of locomotive horns at private highway-rail grade crossings.

(b) Inclusion of SSMs and ASMs in this part or approved subsequent to issuance of this part does not constitute federal preemption of State law regarding whether those measures may be used for traffic control. Individual states may continue to determine whether specific Supplementary Safety Measures (SSMs) or Alternative Safety Measures (ASMs) are appropriate traffic control measures for that State, consistent with Federal Highway Administration regulations and the Manual on Uniform Traffic Control Devices (MUTCD). However, inclusion of SSMs and ASMs in this part does constitute federal preemption of State law concerning the sounding of train horns in relation to the use of those measures.

§ 222.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alternative safety measures (ASM) means a safety system or procedure, other than an SSM, established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority and which, after individual review and analysis by the Associate Administrator, is determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. Appendix B to this part lists such measures.

Associate Administrator means the Associate Administrator for Safety of the Federal Railroad Administration or the Associate Administrator's delegate.

Channelization device means one of a series of highly visible vertical markers placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. ''Tubular markers'' and ''vertical panels'' as described in sections 6F.57 and 6F.58, respectively, of the MUTCD, are acceptable channelization devices for purposes of this part. Additional design

specifications are determined by the standard traffic design specifications used by the governmental entity constructing the channelization device.

Crossing Corridor Risk Index means a number reflecting a measure of risk to the motoring public at public grade crossings along a rail corridor, calculated in accordance with the procedures in appendix D of this part, representing the average risk at each public crossing within the corridor. This risk level is determined by averaging among all public crossings within the corridor, the product of the number of predicted collisions per year and the predicted likelihood and severity of casualties resulting from those collisions at each public crossing within the corridor.

Diagnostic team as used in this part, means a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing.

Effectiveness rate means a number between zero and one which represents the reduction of the likelihood of a collision at a public highway-rail grade crossing as a result of the installation of an SSM or ASM when compared to the same crossing equipped with conventional active warning systems of flashing lights and gates. Zero effectiveness means that the SSM or ASM provides no reduction in the probability of a collision, while an effectiveness rating of one means that the SSM or ASM is totally effective in reducing collisions. Measurements between zero and one reflect the percentage by which the SSM or ASM reduces the probability of a collision.

FRA means the Federal Railroad Administration.

Grade Crossing Inventory Form means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov.*

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive horn means a locomotive air horn, steam whistle, or similar audible warning device (see 49 CFR 229.129) mounted on a locomotive or control cab car. The terms ''locomotive horn'', ''train whistle'', ''locomotive whistle'', and ''train horn'' are used interchangeably in the railroad industry.

Median means the portion of a divided highway separating the travel ways for traffic in opposite directions.

MUTCD means the Manual on Traffic Control Devices published by the Federal Highway Administration.

Nationwide Significant Risk Threshold means a number reflecting a measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in Appendix D of this part. Unless otherwise indicated, references in this part to the Nationwide Significant Risk Threshold reflect its level as last published by FRA.

New Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as a Pre-Rule Quiet Zone.

Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Such curb used where highway speeds do not exceed 40 miles per hour, is more than six inches but not more than nine inches high. If not equipped with reboundable, reflectorized vertical markers, paint and reflective beads should be applied to the curb for night visibility. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

Power-out indicator means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

Pre-Rule Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Private highway-rail crossing means, for purposes of this part, a highway-rail at grade crossing which is not a public highway-rail grade crossing.

Public authority means the public entity responsible for safety and maintenance of the roadway crossing the railroad tracks at a public highway-rail grade crossing. This term includes the traffic control authority or law enforcement authority, or the governmental jurisdiction having responsibility for motor vehicle safety at the crossing.

Public highway-rail grade crossing means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. In the event a public authority maintains the roadway on at least one side of the crossing, the crossing is considered a public crossing for purposes of this part.

Quiet zone means a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded.

Quiet Zone Risk Index means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings), and reduced risk due to implementation, if any, of SSMs and ASMs within the quiet zone. The Quiet Zone Risk Index is calculated in accordance with the procedures in Appendix D of this part.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car.

Supplementary safety measure (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Associate Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A to this part lists such SSMs.

Waiver means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

Wayside horn means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

§ 222.11 What are the penalties for failure to comply with this regulation?

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of least $500 and not more than $11,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G contains a schedule of civil penalty amounts used in connection with this part.

§ 222.13 Who is responsible for compliance?

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

§ 222.15 How does one obtain a waiver of a provision of this regulation?

(a) Except as provided in paragraph (b), two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car shall be sounded when such locomotive or lead car is approaching and passes through each public highway-rail grade crossing. Sounding of the locomotive horn with two long, one short, and one long blast shall be initiated at a location so as to be in accord with paragraph (b) of this section and shall be repeated or prolonged until the locomotive or train occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b) The locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing, but in no event shall a locomotive horn sounded in accordance with paragraph (a) of this section be sounded more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing.

§ 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage.

(2) Notwithstanding any other provision of this part, including provisions addressing the establishment of quiet zones, limits on the length of time in which a horn may be sounded, or installation of wayside horns within quiet zones, this part does not preclude the sounding of locomotive horns in emergency situations, nor does it impose a legal duty to sound the locomotive horn in such situations.

(b) Nothing in this part restricts the use of the locomotive horn where active warning devices have malfunctioned and use of the horn is required by one of the following sections of this Chapter: §§ 234.105; 234.106; or 234.107, or where warning systems are temporarily out of service during inspection, maintenance, or testing. Nothing in this part restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (*e.g.*, to announce the approach of the train to roadway workers in accordance with a program adopted under part 214 of this Chapter, or where required for other purposes under the railroad's operating rules).

§ 222.25 How does this rule affect private highway-rail grade crossings?

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Except as specified in this section, this part is not meant to address the subject of private grade crossings and is not intended to affect present State or local laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive horns at private highway-rail grade crossings.

(a) Private highway-rail grade crossings may be included in a quiet zone.

(b) Private highway-rail grade crossings which are located in New

Quiet Zones and which allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing and the crossing is equipped or treated in accord with the recommendations of such diagnostic team.

(c)(1) At a minimum, every private highway-rail grade crossing within a New Quiet Zone shall be marked by a crossbuck and a ''STOP'' sign, each of which shall conform to the standards contained in the MUTCD, and shall be equipped with advance warning signs in compliance with § 222.35(c).

(2) At a minimum, every private highway-rail grade crossing within a Pre-Rule Quiet Zone shall, by December 18, 2006, be marked by a crossbuck and a ''STOP'' sign, each of which shall conform to the standards contained in the MUTCD, and shall be equipped with advance warning signs in compliance with § 222.35(c)

Subpart C—Exceptions to the Use of the Locomotive Horn

§ 222.31 [Reserved]

Silenced Horns at Individual Crossings

§ 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

(a) A railroad operating over an individual public highway-rail crossing, may, at its discretion, cease the sounding of the locomotive horn if the locomotive speed is 15 miles per hour or less and train crew members, or appropriately equipped flaggers, as defined in 49 CFR 234.5, flag the crossing to provide warning of approaching trains to motorists.

(b) This section does not apply where active grade crossing warning devices have malfunctioned and use of the horn is required by 49 CFR 234.105, 234.106, or 234.107.

Silenced Horns at Groups of Crossings—Quiet Zones

§ 222.35 What are minimum requirements for quiet zones?

The following requirements apply to quiet zones established in conformity with this part.

(a) *Minimum length.* (1) The minimum length of a New Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way.

(2) The length of a Pre-Rule Quiet Zone may continue unchanged from that which existed as of October 9, 1996. Because the addition of any crossing to a Pre-Rule Quiet Zone ends the grandfathered status of that quiet zone, the New Quiet Zone resulting from the addition of one or more crossings to a Pre-Rule Quiet Zone shall be at least one-half mile in length and shall comply with all requirements applicable to New Quiet Zones. The deletion of any crossing from a Pre-Rule Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone status.

(3) A quiet zone may include highway-rail grade crossings on a segment of rail line crossing more than one political jurisdiction.

(b) *Active grade crossing warning devices.* (1) Each public highway-rail grade crossing in a New Quiet Zone established under this subpart must be equipped, no later than the implementation date of the New Quiet Zone, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(2) Pre-Rule Quiet Zones must retain, and may upgrade the grade crossing safety warning system which existed as of December 18, 2003. Any such upgrade shall include constant warning time devices, where reasonably practical, and power-out indicators. In no event may the grade crossing safety warning system which existed as of December 18, 2003, be downgraded. Risk reduction resulting from upgrading to flashing lights or gates may be credited in calculating the quiet zone's Quiet Zone Risk Index.

(c) *Advance warning signs.* (1) Subject to paragraph (c)(2) of this section, each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone or New Quiet Zone shall be equipped with an advance warning sign which advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD issued by the Federal Highway Administration.

(2) Each highway approach to every public and private highway-rail grade crossing in a Pre-Rule Quiet Zone shall be equipped with such advance warning signs described in paragraph (c)(1) of this section by December 18, 2006.

(d) All private crossings within the quiet zone must be treated in accordance with this section and § 222.25.

(e) All public crossings within the quiet zone must be in compliance with requirements of the MUTCD.

§ 222.37 Who may establish a quiet zone?

(a) A public authority may establish quiet zones that are consistent with the provisions of this part. If a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part.

(b) A public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

(c) A State agency may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA; however, any public authority eligible to establish a quiet zone under this part may do so.

§ 222.39 How is a quiet zone established?

(a) *Public authority designation.* This paragraph (a) describes how a quiet zone may be designated by a public authority without the need for formal application to, and approval by FRA. If a public authority complies with either paragraph (a)(1), (2), or (3) of this section, and complies with the information and notification provisions of § 222.43, a public authority may designate a quiet zone without the necessity for FRA review and approval.

(1) A quiet zone may be established by implementing, at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in Appendix A of this part.

(2) A quiet zone may be established if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as follows:

(i) If the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold without being reduced by implementation of SSMs; or

(ii) If SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold.

(3) A quiet zone may be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at or below the risk level which would exist if locomotive horns sounded at all public crossings in the quiet zone.

(b) *Public authority application to FRA.* (1) A public authority may apply to the Associate Administrator for approval of a quiet zone which does not meet the standards for public authority designation under paragraph (a) of this section, but in which it is proposed that one or more safety measures be implemented. Such proposed quiet zone may include only ASMs, or a combination of ASMs and SSMs at various crossings within the quiet zone. Note that an ''SSM'' which does not fully comply with the requirements for an SSM under Appendix A, is considered to be an ASM. The public authority's application must:

(i) Contain an accurate, complete and current Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the proposed quiet zone;

(ii) Contain sufficient detail concerning the present safety measures at the public highway-rail grade crossings proposed to be included in the quiet zone to enable the Associate Administrator to evaluate their effectiveness;

(iii) Contain detailed information as to which SSMs or ASMs are proposed to be implemented and at which public or private highway-rail grade crossings within the proposed quiet zone, including membership and recommendations of the diagnostic team, if any, which reviewed the proposed quiet zone;

(iv) Contain a commitment to implement the proposed safety measures within the proposed quiet zone;

(v) Demonstrate through data and analysis that the proposed implementation of these measures will cause a reduction in the Quiet Zone Risk Index to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below, the Nationwide Significant Risk Threshold; and

(vi) Be provided to the parties listed in § 222.43(a)(1) in the manner specified in that section.

(2)(i) The Associate Administrator will approve the quiet zone if, in the Associate Administrator's judgment, the public authority is in compliance with paragraph (b)(1) of this section and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index which is either:

(A) At or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or

(B) At, or below, the Nationwide Significant Risk Threshold.

(ii) The Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. If the Associate Administrator does not approve the quiet zone, the Associate Administrator describes in the decision the basis upon which the decision was made. A decision denying approval may be reviewed as provided in § 222.57(b).

(c) Appendix C contains guidance on how to create a quiet zone.

§ 222.41 How does this rule affect Pre-Rule Quiet Zones?

(a) *Pre-Rule Quiet Zones which qualify for automatic approval.* A Pre-Rule Quiet Zone will be considered automatically approved and may remain in effect, subject to § 222.51, if the Pre-Rule Quiet Zone is in compliance with § 222.35 (minimum requirements for quiet zones) and § 222.43 (notice and information requirements, with the exception of providing advance notice) and the Pre-Rule Quiet Zone:

(1) Has at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in Appendix A of this part; or

(2) The Quiet Zone Risk Index as last published by FRA is at, or below, the Nationwide Significant Risk Threshold; or

(3) The Quiet Zone Risk Index as last published by FRA is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the five years preceding December 18, 2003.

(b) *Pre-Rule Quiet Zones which do not qualify for automatic approval.* (1) If a Pre-Rule Quiet Zone does not qualify for automatic approval under paragraph (a) of this section, existing restrictions may, at the public authority's discretion, remain in place on an interim basis under the provisions of this paragraph (b) and upon compliance with § 222.43 (notice and information requirements, with the exception of providing advance notice). Continuation of a quiet zone beyond the interim periods specified in this paragraph will require implementation of SSMs or ASMs in accord with § 222.39.

(2) In order to provide time for the public authority to plan for and implement quiet zones which are in compliance with the requirements of this part, a public authority may continue locomotive horn restrictions at Pre-Rule Quiet Zones which do not qualify for automatic approval for a period of five years from December 18, 2003, provided that, the public authority has, within three years of December 18, 2003, filed with the Associate Administrator a detailed plan for establishing a quiet zone under this part, including, in the case of a plan requiring approval under § 222.39(b), all of the required elements of filings under that paragraph together with a timetable for implementation of safety improvements.

(3) Locomotive horn restrictions may continue for an additional three years beyond the five year period permitted by paragraph (b)(2) of this section, if,

(i) Prior to December 18, 2006, the appropriate State agency provides to the Associate Administrator: a comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones which do not qualify for automatic approval under paragraph (a) of this section, which, when implemented, would enable them to qualify for a quiet zone under this part; and

(ii) Prior to December 18, 2007, either physical improvements are initiated at a portion of the crossings within the quiet zone, or the appropriate State agency has participated in quiet zone improvements in one or more jurisdictions elsewhere within the State.

(4) In the event that the safety improvements planned for the quiet zone require approval of FRA under § 222.39(b), the public authority should apply for such approval prior to June 19, 2006, to assure that FRA has ample time in which to review such application prior to the end of the extension period.

§ 222.43 What notices and other information are required to establish a quiet zone?

(a) (1) Upon compliance with §§ 222.39(a) or 222.39(b) resulting in the establishment or approval of a quiet zone, or of its continuation under § 222.41, the public authority shall provide written notice, by certified mail, return receipt requested, of the quiet zone implementation to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control authority

or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; and the Associate Administrator.

(2)(i) Notice of the establishment of a quiet zone established under the provisions of § 222.39 (New Quiet Zones) shall provide the date upon which routine locomotive horn use at grade crossings shall cease, but in no event shall the date be earlier than 21 days after the date of mailing of such written notification.

(ii) Notice of the continuation of a quiet zone under §§ 222.41(a) and (b) (Pre-Rule Quiet Zone) shall be served no later than December 18, 2004.

(3) The notice shall list the grade crossings within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The notice shall also include specific reference to the regulatory provision which provides the basis for establishment or continuation of the quiet zone, citing as appropriate, either § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), or 222.41. Reference to §§ 222.39(a)(1), (2), or (3) shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies. Reference to § 222.39(b) shall include a copy of FRA's notification of approval. Reference to § 222.41 shall include a statement as to how the quiet zone is in compliance with the requirements of that section and, if appropriate, shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies. The notice shall be accompanied by a certificate of service showing to whom and by what means the notice was provided.

(b) The following must be submitted to the Associate Administrator together with the notification required in paragraph (a) of this section:

(1) An accurate and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone, dated within six months prior to designation or FRA approval of the quiet zone;

(2) An accurate, complete and current Grade Crossing Inventory Form reflecting SSMs and ASMs in place upon establishment of the quiet zone. SSMs or ASMs that cannot be fully described on the Inventory Form shall be separately described;

(3) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted;

(4) A list of all parties notified in accordance with paragraph (a) of this section, together with copies of the certificates of service showing to whom and by what means the notice was provided; and

(5) A statement signed by the chief executive officer of each public authority establishing or continuing a quiet zone under this part, in which the official shall certify that responsible officials of the public authority have reviewed documentation prepared by or for FRA, and filed in Docket No. FRA–1999–6439, sufficient to make an informed decision regarding the advisability of establishing the quiet zone. FRA documents which may be of interest are found on FRA's Web site at *http://www.fra.dot.gov.*

§ 222.45 When is a railroad required to cease routine use of locomotive horns at crossings?

After notification from a public authority, pursuant to § 222.43, that a quiet zone is being established, a railroad shall cease routine use of the locomotive horn at all public and private highway-rail grade crossings identified by the public authority upon the date set by the public authority.

§ 222.47 What periodic updates are required?

(a) *Quiet zones with SSMs at each public crossing.* This paragraph addresses quiet zones established pursuant to § 222.39(a)(1) and § 222.41(a)(1) (quiet zones with an SSM implemented at every public crossing within the quiet zone). Between 4½ and 5 years after the date of the original quiet zone implementation notice provided by the public authority to the FRA and relevant railroads under § 222.43(a), and between 4½ and 5 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that the SSMs implemented within the quiet zone continue to conform to the requirements of Appendix A of this part. Copies of such affirmation must be provided to the parties identified in § 222.43(a) by certified mail, return receipt requested; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone.

(b) *Quiet zones which do not have a supplementary safety measure at each public crossing.* This paragraph addresses quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b) and §§ 222.41(a)(2) and (a)(3) (quiet zones which do not have an SSM at every public crossing within the quiet zone). Between 2½ and 3 years after the date of the original quiet zone implementation notice provided by the public authority to the FRA and relevant railroads under § 222.43(a), and between 2½ and 3 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part or the terms of the Quiet Zone approval. Copies of such notification must be provided to the parties identified in § 222.43(a)(1) by certified mail, return receipt requested; and

(2) Must provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone.

§ 222.49 Who may file Grade Crossing Inventory Forms?

(a) Grade Crossing Inventory Forms required to be filed with the Associate Administrator in accordance with §§ 222.43 and 222.47 may be filed by the public authority if, for any reason, such forms are not timely submitted by the State and railroad.

(b) Within 30 days after receipt of a written request of the public authority, the railroad owning the line of railroad that includes public or private highway rail grade crossings within the quiet zone or proposed quiet zone shall provide to the State and public authority sufficient current information regarding the grade crossing and the railroad's operations over the grade crossing to enable the State and public authority to complete the Grade Crossing Inventory Form.

§ 222.51 Under what conditions will FRA review and terminate quiet zone status?

(a) *New Quiet Zone—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each quiet zone established pursuant to §§ 222.39(a)(2) (quiet zones established based on comparison with Nationwide Significant Risk Threshold), and 222.39(b)(2)(ii) (quiet zones established based on approval of FRA and that reduce risk to a level at, or below, the Nationwide Significant Risk Threshold). Annual risk reviews will not be conducted for quiet zones established

pursuant to §§ 222.39(a)(1) (quiet zones established by having an SSM at every public crossing within the quiet zone) and §§ 222.39(a)(3) and (b)(2)(i) (quiet zones established based on the risk level having been reduced to a level fully compensating for the absence of the train horn by use of SSMs). FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction.

(2) *Actions to be taken by public authority to retain quiet zone.* If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, the quiet zone will terminate six months from the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, unless the public authority takes the following actions:

(i) Within six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone to a level at, or below, the Nationwide Significant Risk Threshold or to a level fully compensating for the absence of the train horn. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the crossings within the quiet zone; and

(ii) Within three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to a level that fully compensates for the absence of the train horn, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b), for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (a)(2)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold. Failure to comply with paragraph (a)(2)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold.

(b) *Pre-Rule Quiet Zone—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each Pre-Rule Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(a)(2) and (a)(3). FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction. FRA will also notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

(2) *Pre-Rule Quiet Zone authorized under § 222.41(a)(2).* (i) If a Pre-Rule Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold (§ 222.41(a)(2)), the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains at, or below, the Nationwide Significant Risk Threshold.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold and no relevant collisions have occurred at crossings within the quiet zone within the five years preceding the annual risk review, then the quiet zone may continue as though it originally received automatic approval pursuant to § 222.41(a)(3).

(iii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(3) *Pre-Rule Quiet Zone authorized under § 222.41(a)(3).* (i) If a Pre-Rule Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold but was below twice the Nationwide Significant Risk Threshold and no relevant collisions had occurred within the five year qualifying period (§ 222.41(a)(3)), the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if a relevant collision occurred at a public grade crossing within the quiet zone during the preceding calendar year, the quiet zone will terminate six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index is at, or exceeds twice the Nationwide Significant Risk Threshold or that a relevant collision occurred at a crossing within the quiet zone, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(4) *Actions to be taken by the public authority to retain a quiet zone.* (i) Within six months after the date of FRA notification, the public authority shall provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or to a level that fully compensates for the absence of the train horn. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the public crossings within the quiet zone; and

(ii) Within three years of the date of FRA notification, the public authority shall complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to a level that fully compensates for the absence of the train horn, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b), for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (b)(4)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA. Failure to comply with paragraph (b)(4)(ii) of this section shall result in the termination of the quiet

zone three years after the date of receipt of notification from FRA.

(c) *Review at FRA's initiative.* The Associate Administrator may, at any time, review the status of any quiet zone. If the Associate Administrator makes a preliminary determination that safety systems and measures do not fully compensate for the absence of the locomotive horn, or that there is a significant risk with respect to loss of life or serious personal injury, the Associate Administrator will provide written notice to the public authority and all parties listed in § 222.43(a) and will publish notice of the determination in the **Federal Register**. After providing an opportunity for comment, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The Associate Administrator's decision may be challenged in accordance with § 222.57(b). Nothing in this section is intended to limit the Administrator's emergency authority under 49 U.S.C. 20104 and 49 CFR part 211.

(d) *Notification of termination.* In the event that a quiet zone is terminated under the provisions of this section, it shall be the responsibility of the public authority to notify all parties listed in § 222.43(a) and in the manner specified in § 222.43(a), of such termination.

(e) *Requirement to sound the locomotive horn.* Upon receipt of notification pursuant to paragraph (d), or upon receipt of notification from FRA that the quiet zone is being terminated, railroads shall, within seven days, and in accordance with the provisions of this part, sound the locomotive horn when approaching and passing through every public highway-rail grade crossing within the former quiet zone.

§ 222.53 What are the requirements for supplementary and alternative safety measures?

(a) Approved SSMs are listed in appendix A of this part.

(b) Additional ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b) are listed in appendix B of this part.

(c) The following do not, individually or in combination, constitute SSMs or ASMs: Standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

§ 222.55 How are new supplementary or alternative safety measures approved?

(a) The Associate Administrator may add new SSMs and standards to appendix A and new ASMs and standards to appendix B of this part when the Associate Administrator determines that such measures or standards are an effective substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(b) Interested parties may apply for approval from the Associate Administrator to demonstrate proposed new SSMs or ASMs to determine whether they are effective substitutes for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(c) The Associate Administrator may, after notice and opportunity for comment, order railroad carriers operating over a public highway-rail grade crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs, provided that such proposed new SSMs or ASMs have been subject to prior testing and evaluation. In issuing such order, the Associate Administrator may impose any conditions or limitations on such use of the proposed new SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(d) Upon completion of a demonstration of proposed new SSMs or ASMs, interested parties may apply to the Associate Administrator for their approval. Applications for approval shall be in writing and shall include the following:

(1) The name and address of the applicant;

(2) A description and design of the proposed new SSM or ASM;

(3) A description and results of the demonstration project in which the proposed SSMs or ASMs were tested;

(4) Estimated costs of the proposed new SSM or ASM; and

(5) Any other information deemed necessary.

(e) If the Associate Administrator is satisfied that the proposed safety measure fully compensates for the absence of the warning provided by the locomotive horn, the Associate Administrator will approve its use as an SSM to be used in the same manner as the measures listed in Appendix A of this part, or the Associate Administrator, may approve its use as an ASM to be used in the same manner as the measures listed in Appendix B of this part. The Associate Administrator may impose any conditions or limitations on use of the SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(f) If the Associate Administrator approves a new SSM or ASM, the Associate Administrator will: notify the applicant, if any; publish notice of such action in the **Federal Register**; and add the measure to the list of approved SSMs or ASMs.

(g) A public authority or other interested party may appeal to the Administrator from a decision by the Associate Administrator granting or denying an application for approval of a proposed SSM or ASM or the conditions or limitations imposed on its use in accordance with § 222.57 .

§ 222.57 Can parties seek review of the Associate Administrator's actions?

(a) A public authority or other interested party may petition the Administrator for review of any decision by the Associate Administrator granting or denying an application for approval of a new SSM or ASM under § 222.55. The petition must be filed within 60 days of the decision to be reviewed, specify the grounds for the requested relief, and be served upon all parties identified in § 222.43(a). Unless the Administrator specifically provides otherwise, and gives notice to the petitioner or publishes a notice in the **Federal Register**, the filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

(b) A public authority may challenge a decision by the Associate Administrator to deny an application by that authority for approval of a quiet zone, or to require additional safety measures, or that a quiet zone be terminated, by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for the requested relief, be filed within 60 days of the decision to be reconsidered, and be served upon all parties identified in § 222.43(a). Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and for an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final.

§ 222.59 When may a wayside horn be used?

(a) Notwithstanding any provisions in this part to the contrary:

(1) A wayside horn conforming to the requirements of Appendix E of this part may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates; and

(2) A wayside horn conforming to the requirements of Appendix E of this part may be installed within a quiet zone. For purposes of calculating the length of a quiet zone, the presence of a wayside horn at a highway-grade crossing within a quiet zone shall be considered in the same manner as a grade crossing treated with an SSM. A grade crossing equipped with a wayside horn shall not be considered in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index.

(b) A public authority installing a wayside horn at a grade crossing within a quiet zone shall identify by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name the grade crossing equipped with such wayside horn in its notice to railroads and other parties required by § 222.43.

(c) A public authority installing a wayside horn at a grade crossing outside a quiet zone shall provide written notice to the Associate Administrator and to each railroad operating over the grade crossing that a wayside horn is being installed and the date on which the wayside horn will be operational. The grade crossing shall be identified by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The public authority shall provide notification of the operational date at least 21 days in advance.

(d) A railroad operating over a grade crossing equipped with an operational wayside horn installed within a quiet zone pursuant to this section shall cease routine locomotive horn use at the grade crossing. A railroad operating over a grade crossing equipped with an operational wayside horn installed outside of a quiet zone may cease routine locomotive horn use by agreement with the public authority.

Appendix A to Part 222—Approved Supplementary Safety Measures

1. *Temporary Closure of a Public Highway-Rail Grade Crossing:* Close the crossing to highway traffic during designated quiet periods.

Effectiveness: 1.0.

Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would therefore equal 1. However, analysis should take into consideration that traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular ''closure'' was accomplished by a grade separation.

Required:

a. The closure system must completely block highway traffic from entering the crossing.

b. The crossing must be closed during the same hours every day.

c. The crossing may only be closed during one period each 24-hours.

d. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

e. Daily activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad. The entity may provide for third party activation and deactivation; however, the public authority shall remain fully responsible for compliance with the requirements of this part.

f. The system must be tamper and vandal resistant to the same extent as other traffic control devices.

Recommended:

Signs for alternate highway traffic routes should be erected in accordance with MUTCD and State and local standards and should inform pedestrians and motorists that the streets are closed, the period for which they are closed, and that alternate routes must be used.

2. *Four-Quadrant Gate System:* Install gates at a crossing sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach.

Effectiveness:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with traffic channelization of at least 60 feet (with or without presence detection): .92.

Required:

Four-quadrant gate systems shall conform to the standards for four-quadrant gates contained in the MUTCD, and shall in addition comply with the following:

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

c. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements b and c apply only to New Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices, if reasonably practical, and power-out indicators are required.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

Recommendations for new installations only:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPD should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

3. *Gates with Medians or Channelization Devices:* Install medians or channelization devices on both highway approaches to a public highway-rail grade crossing denying to the highway user the option of

circumventing the approach lane gates by switching into the opposing (oncoming) traffic lane in order to drive around lowered gates to cross the tracks.

Effectiveness:

Channelization devices—.75

Non-traversable curbs with or without channelization devices—.80.

Required:

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) Medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated. Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of ''no left turn'' signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority can not comply with the 60 feet or 100 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), ''Public authority application to FRA.'' Such arrangement may qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index. Similarly, if a public authority finds that it is feasible to only provide channelization on one approach to the crossing, it may also apply to FRA for approval under § 222.39(b). Such an arrangement may also qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

e. Crossing warning systems must be equipped with power-out indicators. Note: Requirements b and c apply only to New Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices, if reasonably practical, and power-out indicators are required.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. ''Break-away'' channelization devices must be frequently monitored to replace broken elements

4. *One Way Street with Gate(s):* Gate(s) must be installed such that all approaching highway lanes to the public highway-rail grade crossing are completely blocked.

Effectiveness: .82.

Required:

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position must be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

d. Crossing warning systems must be equipped with power-out indicators. Note: Requirements c and d apply only to New Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices, if reasonably practical, and power-out indicators are required.

Appendix B to Part 222—Alternative Safety Measures

Introduction

A public authority seeking approval of a quiet zone under public authority application to FRA (§ 222.39(b)) may include in its proposal ASMs listed in this appendix. Credit will be given for closing of public highway-rail grade crossings provided the baseline severity risk index at other crossings is appropriately adjusted by increasing traffic counts at neighboring crossings as input data to the severity risk formula (except to the extent that nearby grade separations are expected to carry that traffic). FRA Regional Managers for Grade Crossing Safety can assist in performing the required analysis.

Appendix B addresses two types of ASMs: Modified SSMs and non-engineering ASMs. Modified SSMs are SSMs that do not fully comply with the provisions listed in appendix A. Depending on the resulting configuration, non-compliant SSMs may still provide a substantial reduction in risk and can contribute to the creation of quiet zones. Non-engineering ASMs are programmed enforcement, public education and awareness, and photo enforcement that may be used to reduce risk in the creation of a quiet zone. The public authority must receive written FRA approval of the quiet zone application prior to the silencing of train horns. The public authority is strongly encouraged to submit the application to FRA for review and comment *before* the appendix B treatments are initiated to ensure that the proposed modified SSMs and/or non-engineering ASMs will meet with FRA's approval. If non-engineering ASMs are proposed, the public authority may wish to confirm with FRA that the sampling methods are appropriate.

I. Modified SSMs

a. If there are unique circumstances pertaining to a specific crossing or number of crossings which prevent SSMs from being fully compliant with all of the SSM requirements listed in Appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified by the pubic authority, will be treated as an ASM under this Appendix B, and not as an SSM under Appendix A. FRA will review the safety effects of the modified SSMs and the proposed quiet zone, and will approve the proposal if it finds that the Quiet Zone Risk Index is reduced to the level that would be expected with the sounding of the train horns or to a level at, or below the Nationwide Significant Risk Threshold, whichever is greater.

b. A public authority may provide estimates of effectiveness based upon adjustments from the effectiveness levels provided in Appendix A or from actual field data derived from the crossing sites. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from experience under the final rule.

c. If one or more of the requirements associated with an SSM as listed in Appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s).

II. Non-Engineering ASMs

A. The following non-engineering ASMs may be used in the creation of a Quiet Zone: (The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and provision for dealing with an unacceptable effectiveness rate is provided in paragraph B.

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness ASM.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring that

provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A sustainable public education and awareness program must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort. This program shall be provided and supported primarily through local resources.

3. *Photo Enforcement:* This ASM entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Required:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law;

b. Sanction includes sufficient minimum fine (*e.g.*, $100 for a first offense, ''points'' toward license suspension or revocation) to deter violations;

c. Means to reliably detect violations (*e.g.*, loop detectors, video imaging technology);

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations, as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement;

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns;

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

B. The effectiveness of an ASM will be determined as follows:

1. Establish the quarterly (3 months) baseline violation rates for each crossing in the proposed quiet zone.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (*e.g.* inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as in this paragraph unless FRA authorizes another methodology.

2. The ASM should then be initiated for each crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for each crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Determined the effectiveness rate of the ASM for each crossing by multiplying the violation rate reduction by .78.

6. Using the effectiveness rates for each crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in quiet zone or to a risk level below the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

7. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate that was used to determine the effectiveness rate that was approved by FRA, violation rates may be monitored for one quarter per year.

8. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate is still greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Appendix C to Part 222—Guide to Establishing Quiet Zones

Introduction

This Guide to Establishing Quiet Zones (Guide) is divided into four sections in order to address the variety of methods and conditions that affect the establishment of quiet zones under this rule.

Section I of the Guide provides an overview of the different ways in which a quiet zone may be established under this rule. This includes a brief discussion on the safety thresholds that must be attained in order for train horns to be silenced and the relative merits of each. It also includes the two general methods that may be used to reduce risk in the proposed quiet zone, and the different impacts that the methods have on the quiet zone implementation process.

Section II of the Guide provides information on establishing New Quiet Zones. A New Quiet Zone is one at which train horns are currently being sounded at crossings. The Public Authority Designation and Public Authority Application to FRA methods will be discussed in depth.

Section III of the Guide provides information on establishing Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is one where train horns were not routinely sounded as of October 9, 1996 and December 18, 2003. The differences between New and Pre-Rule Quiet Zones will be explained. Public Authority Designation and Public Authority Application to FRA methods also apply to Pre-Rule Quiet Zones.

Section IV of the Guide deals with the required notifications that must be provided

by public authorities when establishing both New and continuing Pre-Rule Quiet Zones.

Section V of the Guide provides examples of quiet zone implementation.

Section I—Overview

In order for a quiet zone to be qualified under this rule, it must be shown that the lack of the train horn does not present a significant risk with respect to loss of life or serious personal injury, or that the significant risk has been compensated for by other means. The rule provides four basic ways in which a quiet zone may be established. Creation of both New Quiet Zones and Pre-Rule Quiet Zones are based on the same general guidelines; however, there are a number of differences that will be noted in the discussion on Pre-Rule Quiet Zones.

A. Qualifying Conditions

One of the following four conditions or scenarios must be met in order to show that the lack of the train horn does not present a significant risk, or that the significant risk has been compensated for by other means:

1. One or more SSMs as identified in Appendix A are installed at *each* public crossing in the quiet zone; or

2. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without implementation of additional safety measures at any crossings in the quiet zone; or

3. Additional safety measures are implemented at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold; or

4. Additional safety measures are taken at selected crossings resulting in the Quiet Zone Risk Index being reduced to at least the level of risk that would exist if train horns were sounded at every public crossing in the quiet zone.

It is important to consider the implications of each approach before deciding which one to use. If a quiet zone is qualified based on reference to the Nationwide Significant Risk Threshold (*i.e.* the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold—see the second and third scenarios above), then an annual review will be done by FRA to determine if the Quiet Zone Risk Index remains equal to, or less than, the Nationwide Significant Risk Threshold. Since the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index may change from year to year, there is no guarantee that the quiet zone will remain qualified. The circumstances that cause the disqualification may not be subject to the control of the public authority. For example, an overall national improvement in safety at gated crossings may cause the Nationwide Significant Risk Threshold to fall. This may cause the Quiet Zone Risk Index to become greater than the Nationwide Significant Risk Threshold. If the quiet zone is no longer qualified, then the public authority will have to take additional measures, and may incur additional costs that might not have been budgeted, to once again lower the Quiet Zone Risk Index to at least the Nationwide Significant Risk Threshold in order to retain the quiet zone. Therefore, while the initial cost to implement a quiet zone under the second or third scenario may be lower than the other options, these scenarios also carry a degree of uncertainty about the quiet zone's continued existence.

The use of the first or fourth scenarios reduces the risk level to at least the level that would exist if train horns were sounding in the quiet zone. These methods may have higher initial costs because more safety measures may be necessary in order to achieve the needed risk reduction. Despite the possibility of greater initial costs, there are several benefits to these methods. The installation of SSMs at every crossing will provide the greatest safety benefit of any of the methods that may be used to initiate a quiet zone. With both of these methods (first and fourth scenarios), the public authority will never need to be concerned about the Nationwide Significant Risk Threshold, annual reviews of the Quiet Zone Risk Index, or failing to be qualified because the Quiet Zone Risk Index is higher than the Nationwide Significant Risk Threshold. Public authorities are strongly encouraged to carefully consider both the pros and cons of all of the methods and to choose the method that will best meet the needs of its citizens by providing a safer and quieter community.

For the purposes of this Guide, the term ''Risk Index with Horns'' is used to represent the level of risk that would exist if train horns were sounded at every public crossing in the proposed quiet zone. If a public authority decides that it would like to fully compensate for the lack of a train horn and not install SSMs at each public crossing in the quiet zone, it must reduce the Quiet Zone Risk Index to a level that is equal to, or less than, the Risk Index with Horns. The Risk Index with Horns is similar to the Nationwide Significant Risk Threshold in that both are targets that must be reached in order to establish a quiet zone under the rule. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Nationwide Significant Risk Threshold will be reviewed annually by FRA to determine if it still qualifies under the rule to retain the quiet zone. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Risk Index with Horns will not be subject to annual reviews.

The use of FRA's web-based Quiet Zone Calculator is recommended to aid in the decision making process (*http://www.fra.dot.gov/Content3.asp?P=1337*). The Quiet Zone Calculator will allow the public authority to consider a variety of options in determining which SSMs make the most sense. It will also perform the necessary calculations used to determine the existing risk level and whether enough risk has been mitigated in order to create a quiet zone under this rule.

B. Risk Reduction Methods

FRA has established two general methods to reduce risk in order to have a quiet zone qualify under this rule. The method chosen impacts the manner in which the quiet zone is implemented.

1. *Public Authority Designation (SSMs)*—The Public Authority Designation method (§ 222.39(a)) involves the use of SSMs (*see* appendix A) at some or all crossings within the quiet zone. The use of only SSMs to reduce risk will allow a public authority to designate a quiet zone without approval from FRA. If the public authority installs SSM's at every crossing within the quiet zone, it need not demonstrate that they will reduce the risk sufficiently in order to qualify under the rule since FRA has already assessed the ability of the SSMs to reduce risk. However, if only SSMs are installed within the quiet zone, but not at every crossing, the public authority must calculate that sufficient risk reduction will be accomplished by the SSMs. Once the improvements are made, the public authority must make the required notifications, and the quiet zone may be implemented. FRA does not need to approve the plan as it has already assessed the ability of the SSMs to reduce risk.

2. *Public Authority Application to FRA (ASMs)*—The Public Authority Application to FRA method (§ 222.39(b)) involves the use of ASMs (*see* appendix B). ASMs include both modified SSMs that do not fully comply with the provisions found in Appendix A (*e.g.* shorter than required traffic channelization devices), and non-engineering ASMs such as programmed law enforcement. If the use of ASMs (or a combination of ASMs, SSMs, and modified SSMs) is elected to reduce risk, then the public authority must apply to FRA for approval of the quiet zone. The application must contain sufficient data and analysis to confirm that the proposed ASMs do indeed provide the necessary risk reduction. FRA will review the application and will issue a formal approval if it determines that risk is reduced to a level that is necessary in order to comply with the rule. Once FRA approval has been received and the safety measures fully implemented, the public authority would then proceed to make the necessary notifications, and the quiet zone may be implemented. The use of non-engineering ASMs will require continued monitoring and analysis throughout the existence of the quiet zone to ensure that risk continues to be reduced.

3. *Calculating Risk Reduction*—The following should be noted when calculating risk reductions in association with the establishment of a quiet zone. This information pertains to both New Quiet Zones and Pre-Rule Quiet Zones and to the Public Authority Designation and Public Authority Application to FRA methods.

Crossing closures: If any public crossing within the quiet zone is proposed to be closed, include that crossing when calculating the Risk Index with Horns. Do *not* include the crossing to be closed when calculating the Quiet Zone Risk Index since the crossing will no longer exist. This will reflect the fact that the risk associated with the crossing has been eliminated entirely. However, be sure to increase the traffic counts at other crossings within the quiet zone and recalculate the risk indices for those crossings that will handle the traffic diverted from the closed crossing.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. A, B and D streets are equipped with flashing lights and gates. C Street is a passive

crossbuck crossing with a traffic count of 400 vehicles per day. It is decided that C Street will be closed as part of the project. Compute the risk indices for all four streets. The calculation for C Street will utilize flashing lights and gates as the warning device. Calculate the Crossing Corridor Risk Index by averaging the risk indices for all four of the crossings. This value will also be the Risk Index with Horns since train horns are currently being sounded. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by increasing the traffic count for each crossing by 200. (Assume for this example that the public authority decided that the traffic from C Street would be equally divided between B and D streets.) Increase the risk indices for A, B and D streets by 66.8 percent and average the results. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by closing C Street.

Grade Separation: Grade separated crossings that were in existence before the creation of a quiet zone are not included in any of the calculations. However, any public crossings within the quiet zone that are proposed to be treated by grade separation should be treated in the same manner as crossing closures as explained above. Highway traffic that may be diverted from other crossings within the quiet zone to the new grade separated crossing should be considered when computing the Quiet Zone Risk Index.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. C Street is a busy crossing with a traffic count of 25,000 vehicles per day. It is decided that C Street will be grade separated as part of the project. Compute the risk indices for all four streets. Calculate the Crossing Corridor Risk Index, which will also be the Risk Index with Horns, by averaging the risk indices for all four of the crossings. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by decreasing the traffic count for each crossing by 1,200. (The public authority decided that 2,400 motorists will decide to use the grade separation at C Street in order to avoid possible delays caused by passing trains.) Increase the risk indices for A, B and D streets by 66.8 percent and average the results. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by the grade separation at C Street.

Wayside Horns: Crossings with wayside horn installations will be treated as a one for one substitute for the train horn and are not to be included when calculating the Crossing Corridor Risk Index, the Risk Index with Horns or the Quiet Zone Risk Index.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. It is decided that C Street will have a wayside horn installed. Compute the risk indices for A, B and D streets. Since C Street is being treated with a wayside horn, it is not included in the calculation of risk. Calculate the Crossing Corridor Risk Index by averaging the risk indices for A, B and D streets. This value is also the Risk Index with Horns. Increase the risk indices for A, B and D streets by 66.8 percent and average the results. This is the initial Quiet Zone Risk Index for the proposed quiet zone.

Section II—New Quiet Zones

FRA has established several approaches that may be taken in order to establish a New Quiet Zone under this rule. Please see the preceding discussions on ''Qualifying Conditions'' and ''Risk Reduction Methods'' to assist in the decision-making process on which approach to take. This following discussion provides the steps necessary to establish New Quiet Zones and includes both the Public Authority Designation and Public Authority Application to FRA methods. It must be remembered that in a New Quiet Zone all public crossings must be equipped with flashing lights and gates.

A. Requirements for Both Public Authority Designation and Public Authority Application

The following steps are necessary when establishing a New Quiet Zone. This information pertains to both the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public and private at-grade crossings that will be included within the quiet zone. Also determine any existing grade-separated crossings that fall within the quiet zone. Each crossing must be identified by the US DOT Crossing Inventory number and street or highway name. If a crossing does not have a US DOT crossing number, then contact FRA's Office of Safety (202–493–6299) for assistance.

2. Ensure that the quiet zone will be at least one-half mile in length. (§ 222.35(a)(1))

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public and private) within the quiet zone. These must be dated within six months prior to the designation of the quiet zone. An inspection of each crossing in the proposed quiet should be performed and the Grade Crossing Inventory Forms updated to reflect the current conditions at each crossing.

4. Every public crossing within the quiet zone must be equipped with active warning devices comprising both flashing lights and gates. The warning devices must be equipped with power out indicators. Constant warning time circuitry is also required unless existing conditions would prevent the proper operation of the constant warning time circuitry. The plans for the quiet zone may be made assuming that flashing lights and gates are at all public crossings; however the quiet zone may not be implemented until all public crossings are actually equipped with the flashing lights and gates. (§ 222.35(b)(1))

5. Private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations. (§§ 222.25(b) and (c))

6. Each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing. (§ 222.35(c)(1) and 222.25(c)(2))

B. New Quiet Zones—Public Authority Designation

Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b). In addition, one of the following conditions must be met in order for a public authority to designate a new quiet zone without FRA approval:

- One or more SSMs as identified in Appendix A are installed at *each* public crossing in the quiet zone (§ 222.39(a)(1)); or
- The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without SSMs installed at any crossings in the quiet zone (§ 222.39(a)(2)(i)); or
- SSMS's are installed at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold (§ 222.39(a)(2)(ii)); or
- SSMS's are installed at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level of risk that would exist if the horn were sounded at every crossing in the quiet zone (*i.e.* the Risk Index with Horns) (§ 222.39(a)(3)).

Steps necessary to establish a New Quiet Zone using the Public Authority Application to FRA method:

1. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the requirements for a public authority designation quiet zone have been met. It is not necessary for the same SSM to be used at each crossing. Once the necessary improvements have been installed, notifications may take place and the quiet zone implemented in accordance with the rule. If SSMs are not installed at each crossing, proceed on to Step 2 and use the risk reduction method.

2. To begin, calculate the risk index for each public crossing within the quiet zone (*See* appendix D. FRA's web-based Quiet Zone Calculator may be used to do this calculation). If flashing lights and gates have to be installed at any public crossings, calculate the risk indices for such crossings as if lights and gates were installed. (**Note:** Flashing lights and gates must be installed prior to initiation of the quiet zone.) If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index. Note: Private crossings are not included when computing the risk for the proposed quiet zone.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are routinely being sounded for crossings in the proposed quiet zone, this value is also the Risk Index with Horns.

4. In order to calculate the initial Quiet Zone Risk Index, first adjust the risk index at each public crossing to account for the increased risk due to the absence of the train horn. The absence of the horn is reflected by an increased risk index of 66.8 percent at

gated crossings. (New Quiet Zones within the Chicago Region will reflect an increased risk index of 17.3 percent.) The initial Quiet Zone Risk Index is then calculated by averaging the increased risk index for each public crossing within the proposed quiet zone. At this point the Quiet Zone Risk Index will equal the Risk Index with Horns multiplied by 1.668.

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the public authority may decide to designate a quiet zone and proceed with the notification process. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the Public Authority so that appropriate measures can be taken. (*See* § 222.51(a).)

6. If the Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold, then select an appropriate SSM for a crossing. Reduce the inflated risk index calculated in Step 4 for that crossing by the effectiveness rate of the chosen SSM. (*See* appendix A for the effectiveness rates for the various SSMs.) Recalculate the Quiet Zone Risk Index by averaging the revised inflated risk index with the inflated risk indices for the other public crossings. If this new Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, the quiet zone would qualify for public authority designation. If the Quiet Zone Risk Index is still higher than the Nationwide Significant Risk Threshold, treat another public crossing with an appropriate SSM and repeat the process until the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold. Once this is obtained the quiet zone has qualified for the public authority designation method, and notification may take place once all the necessary improvements have been installed. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (*See* § 222.51(a).)

7. If the public authority wishes to reduce the risk of the quiet zone to the level of risk that would exist if the horn were sounded at every crossing within the quiet zone, the public authority should calculate the initial Quiet Zone Risk Index as in Step 4. The objective is to now reduce the Quiet Zone Risk Index to the level of the Risk Index with Horns by adding SSMs at the crossings. The difference between the Quiet Zone Risk Index and the Risk Index with Horns is the amount of risk that will have to be reduced in order to fully compensate for lack of the train horn. The use of the Quiet Zone Calculator will aid in determining which SSMs may be used to reduce the risk sufficiently. Follow the procedure stated in Step 6, except that the Quiet Zone Risk Index must be equal to, or less than, the Risk Index with Horns instead of the Nationwide Significant Risk Threshold. Once this risk level is attained, the quiet zone has qualified for the public authority designation method, and notification may take place once all the necessary improvements have been installed. One important distinction with this option is that the public authority will never need to be concerned with the Nationwide Significant Risk Threshold or the Quiet Zone Risk Index. The rule's intent is to make the quiet zone as safe as if the train horns were sounding. If this is accomplished, the public authority may designate the crossings as a quiet zone and need not be concerned with possible fluctuations in the Nationwide Significant Risk Threshold or annual risk reviews.

C. New Quiet Zones—Public Authority Application to FRA

A public authority must apply to FRA for approval of a quiet zone under two conditions. First, if any of the SSMs selected for the quiet zone do not fully conform to the design standards set forth in appendix A. These are referred to as modified SSMs in appendix B. Second, when programmed law enforcement, public education and awareness programs, or photo enforcement is used to reduce risk in the quiet zone, these are referred to as non-engineering ASMs in appendix B. It should be remembered that non-engineering ASMs will require periodic monitoring as long as the quiet zone is in existence. Please *see* appendix B for detailed explanations of ASMs and the periodic monitoring of non-engineering ASMs.

The public authority is strongly encouraged to submit the application to FRA for review and comment *before* the appendix B treatments are initiated. This will enable FRA to provide comments on the proposed modified SSMs or non-engineering ASMs to help guide the application process. If non-engineering ASMs are proposed, the public authority also may wish to confirm with FRA that the methodology it plans to use to determine the effectiveness rates of the proposed ASMs is appropriate. A quiet zone that utilizes a combination of SSMs from appendix A and ASMs from appendix B must make a Public Authority Application to FRA. A complete and thoroughly documented application will help to expedite the approval process.

The following discussion is meant to provide guidance on the steps necessary to establish a new quiet zone using the Public Authority Application to FRA method. Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b).

1. Gather the information previously mentioned in the section on ''Requirements for both Public Authority Designation and Public Authority Application.''

2. Calculate the risk index for each public crossing as directed in Step 2—Public Authority Designation.

3. Calculate the Crossing Corridor Risk Index, which is also the Risk Index with Horns, as directed in Step 3—Public Authority Designation.

4. Calculate the initial Quiet Zone Risk Index as directed in Step 4—Public Authority Designation.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and SSMs. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. (Remember that the public authority may choose which level of risk reduction is the most appropriate for its community.) Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be proposed based upon adjustments from the effectiveness rates provided in appendix A or from actual field data derived from the crossing sites. The application should provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph 2(b).

6. Once it has been determined through analysis that the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, the application must contain the following (§ 222.39(b)(1)):

- Sufficient detail concerning the present safety measures at the public crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms.
- Detailed information on the SSMS's or ASM's that are proposed to be implemented and at which public crossings within the proposed quiet zone.
- Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.
- A commitment to implement the proposed safety measures.
- Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to equal, to or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.
- A copy of the application must be provided to the parties listed under Required Notifications.

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then proceed with notifications and implementation of the quiet zone. If the quiet zone is qualified by reducing the Quiet Zone Risk Index to at the least the level of the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public

authority so that appropriate measures can be taken. (*See* § 222.51(a)).

Note: The provisions stated above for crossing closures, grade separations and wayside horns apply for Public Authority Application to FRA as well.

Section III—Pre-Rule Quiet Zones

Pre-Rule Quiet Zones are treated slightly differently from New Quiet Zones in the rule. This is a reflection of the statutory requirement to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings * * *'' It also recognizes the historical experience of train horns not being sounded at Pre-Rule Quiet Zones.

Overview

Pre-Rule Quiet Zones that do not meet the requirements for automatic approval (*see* discussion that follows) must meet the same requirements as New Quiet Zones as provided in § 222.39. In other words, risk must be reduced through the use of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or to a risk level equal to, or less than, the Nationwide Significant Risk Threshold. Pre-Rule Quiet Zones must meet these requirements by December 18, 2008 (§ 222.41(b)(2)). There are four differences in the requirements between Pre-Rule Quiet Zones and New Quiet Zones that must be noted.

First, since train horns have not been routinely sounded in the Pre-Rule Quiet Zone, it is not necessary to increase the risk indices of the public crossings to reflect the additional risk caused by the lack of a train horn. Since the train horn has already been silenced, the added risk caused by the lack of a horn is reflected in the actual collision history at the crossings. Collision history is an important part in the calculation of the severity risk indices. In other words, the Quiet Zone Risk Index is calculated by averaging the existing risk index for each public crossing without the need to increase the risk index by 66.8 percent. For Pre-Rule Quiet Zones, the Crossing Corridor Risk Index and the initial Quiet Zone Risk Index have the same value.

Second, since train horns have been silenced at the crossings, it will be necessary to mathematically determine what the risk level would have been at the crossings if train horns had been routinely sounded. These revised risk levels then will be used to calculate the Risk Index with Horns. This calculation is necessary to determine how much risk must be eliminated in order to compensate for the lack of the train horn. This will allow the public authority to have the choice to reduce the risk to at least the level of the Nationwide Significant Risk Threshold or to fully compensate for the lack of the train horn.

To calculate the Risk Index with Horns, the first step is to divide the existing severity risk index for each crossing by the appropriate value as shown in Table 1. This process eliminates the risk that was caused by the absence of train horns. The table takes into account that the train horn has been found to produce different levels of effectiveness in preventing collisions depending on the type of warning device at the crossing. (**Note:** FRA's web based Quiet Zone Calculator will perform this computation automatically for pre-rule quiet zones.) The Risk Index with Horns is the average of the revised risk indices. The difference between the calculated Risk Index with Horns and the Quiet Zone Risk Index is the amount of risk that would have to be reduced in order to fully compensate for the lack of train horns.

TABLE 1.—RISK INDEX DIVISOR VALUES

	Passive	Flashing lights	Lights and gates
U.S. except Chicago	1.749	1.309	1.668
Chicago Region	N/A	N/A	1.173

Note: The Chicago Region includes the Illinois counties of: Cook, DuPage, Lake, Kane, McHenry and Will. Pre-Rule Quiet Zones in the Chicago Region are able to use a lower adjustment factor at crossings equipped with gates due to data that indicate that the collision rate for Pre-Rule Quiet Zone crossings that were equipped with flashing lights and gates in the Chicago Region had an increased collision rate of 17.3 percent when compared to similar gated crossings in the Nation where horns were sounded. Gated crossings in Pre-Rule Quiet Zones outside of the Chicago Region had an increased collision rate of 66.8 percent when compared to similar crossings in the Nation where horns were sounded. Passive and flashing lights crossings in the Chicago Region use the ''U.S. except Chicago'' values in Table 1.

The third difference is that credit is given for the risk reduction that is brought about through the upgrading of the warning devices at public crossings (§ 222.35(b)(2)). For New Quiet Zones, all crossings must be equipped with automatic warning devices consisting of flashing lights and gates. Crossings without gates must have gates installed. The severity risk index for that crossing is then calculated to establish the risk index that is used in the Risk Index with Horns. The Risk Index with Horns is then increased by 66.8 percent to adjust for the lack of the train horn. The adjusted figure is the initial Quiet Zone Risk Index. There is no credit received for the risk reduction that is attributable to warning device upgrades.

For Pre-Rule Quiet Zones, the Risk Index with Horns is calculated from the initial risk indices which use the warning devices that are currently installed. If a public authority elects to upgrade an existing warning device as part of its quiet zone plan, the accident prediction value for that crossing will be re-calculated based on the upgraded warning device. (Once again, FRA's web-based Quiet Zone Calculator can do the actual computation.) The new accident prediction value is then used in the severity risk index formula to determine the risk index for the crossing. This adjusted risk index is then used to compute the new Quiet Zone Risk Index. This computation allows the risk reduction attributed to the warning device upgrades to be used in establishing a quiet zone.

The fourth difference is that pre-rule quiet zones have different minimum requirements under § 222.35. A pre-rule quiet zone may be less than one-half mile in length if that was its length as of October 9, 1996. A pre-rule quiet zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing (§ 222.32(b)(2)). The existing crossing safety warning systems in place as of December 18, 2003, may be retained but cannot be downgraded. It also is not necessary for the automatic warning devices to be equipped with constant warning time devices or power out indicators; however, when the warning devices are upgraded, constant warning time and power out indicators will be required if reasonably practical (§ 222.35(b)(2)). Advance warning signs that notify the motorist that train horns are not sounded and STOP signs and crossbucks at private crossings do not have to be installed until December 18, 2006, which allows three years to install the required signage.

A. Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones

These following is necessary when establishing a Pre-Rule Quiet Zone. This information pertains to Automatic Approval, the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public and private at-grade crossings that will be included within the quiet zone. Also determine any existing grade separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street name. If a crossing does not have a U.S. DOT crossing number then contact FRA for assistance.

2. Document the length of the quiet zone. It is not necessary that the quiet zone be at least one-half mile in length. Pre-Rule Quiet Zones may be shorter than one-half mile. However, the addition of a new crossing to a quiet zone nullifies its pre-rule status, and the resulting New Quiet Zone must be at least

one-half mile. The deletion of a crossing from a Pre-Rule Quiet Zone (except through closure or grade separation) must result in a quiet zone that is a least one half mile in length.

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public and private) within the quiet zone. These must be dated within six months prior to the designation of the quiet zone. An inspection of each crossing in the proposed quiet should be performed and the Grade Crossing Inventory Forms updated to reflect the current conditions at each crossing.

4. Pre-Rule Quiet Zones must retain, and may upgrade, the existing grade crossing safety warning systems. Unlike New Quiet Zones, it is not necessary that every public crossing within a Pre-Rule Quiet Zone be equipped with active warning devices comprising both flashing lights and gates. Existing warning devices need not be equipped with power out indicators and constant warning time circuitry. If warning devices are upgraded to flashing lights, or flashing lights and gates, the upgraded equipment must include, as is required for New Quiet Zones, power out indicators and constant warning time devices (if reasonably practical).

5. By December 18, 2006, private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations unless the quiet zone qualifies for automatic approval. A diagnostic team review of private crossings is not necessary for Pre-Rule Quiet Zones that qualify for Automatic Approval.

6. By December 18, 2006, each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing.

B. Pre-Rule Quiet Zones—Automatic Approval

In order for a Pre-Rule Quiet Zone to be automatically approved as a quiet zone under this rule (§ 222.41(a)), one of the following conditions must be met:

- One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone; or
- The Quiet Zone Risk Index is equal, to or less, than the Nationwide Significant Risk Threshold; or
- The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years.

Additionally, it must be in compliance with the minimum requirements for quiet zones (§ 222.35) and the notification requirements in § 222.43.

The following discussion is meant to provide guidance on the steps necessary to determine if a Pre-Rule Quiet Zone qualifies for automatic approval.

1. All of the items listed in *Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones* previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. If one or more SSMs as identified in Appendix A are installed at each public crossing in the quiet zone, the quiet zone qualifies and notification should take place. If the Pre-Rule Quiet Zone does not qualify by this step, proceed on to the next step.

3. Calculate the risk index for each public crossing within the quiet zone (*See* appendix D). Be sure that the risk index is calculated using the formula appropriate for the type of warning device that is actually installed at the crossing. Unlike New Quiet Zones, it is not necessary to calculate the risk index using flashing lights and gates as the warning device. (FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Quiet Zone Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. (**Note:** The initial Quiet Zone Risk Index and the Crossing Corridor Risk Index are the same for Pre-Rule Quiet Zones.)

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the quiet zone qualifies for automatic approval, and the public authority may proceed with the notification process. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(b)(2)). If the pre-rule quiet zone does not qualify by this step, proceed on to the next step.

6. If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years, then the quiet zone qualifies for automatic approval, and the public authority may proceed with the notification process. **Note:** A relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above two times the Nationwide Significant Risk Threshold, or a relevant collision has occurred during the preceding year, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(b)(3)).

If the Pre-Rule Quiet Zone does not qualify for automatic approval, continuation of the quiet zone beyond the interim three year period will require implementation of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to a risk level equal to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or the Nationwide Significant Risk Threshold. This is the same methodology used to create New Quiet Zones with the exception of the four differences previously noted. A review of the previous discussion on the two methods used to establish quiet zones may prove helpful in determining which would be the most beneficial to use for a particular Pre-Rule Quiet Zone.

C. Pre-Rule Quiet Zones—Public Authority Designation

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet Zone using the Public Authority Designation method.

1. All of the items listed in ''Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. Calculate the risk index for each public crossing within the quiet zone as in Step 3—Pre-Rule Quiet Zones—Automatic Approval.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

4. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide the risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

5. Begin to reduce the Quiet Zone Risk Index through the use of SSMs or by upgrading existing warning devices. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident

prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. This new risk index is then used to compute the new Quiet Zone Risk Index. (Remember that FRA's web-based Quiet zone Calculator will be able to do the actual computations.) Once the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the quiet zone has qualified for the Public Authority Designation method, and notification may take place once all the necessary improvements have been installed. If quiet zone is established by reducing the Quiet Zone Risk Index to equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(a)).

Note: The provisions stated above for crossing closures, grade separations, and wayside horns apply for Public Authority Designation.

D. Pre-Rule Quiet Zones—Public Authority Application to FRA

The following discussion is meant to provide guidance in the steps necessary to establish a Pre-Rule Quiet zone using the Public Authority Application to FRA method.

1. All of the items listed in ''Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. Calculate the risk index for each public crossing within the quiet zone (See Appendix D. FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

4. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide its risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and/or SSMs. Follow the procedure the provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. (Remember that FRA's web-based quiet zone risk calculator will be able to do the actual computations.) This new risk index is then used to compute the new Quiet Zone Risk Index. Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be proposed based upon adjustments from the benchmark levels provided in Appendix A or from actual field data derived from the crossing sites. The application should provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph 2(b).

6. Once it has been determined through analysis that the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, it should be remembered that the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at the public crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms.

b. Detailed information on the SSMS's, ASM's, or upgraded warning devices that are proposed to be implemented and at which public crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. A commitment to implement the proposed safety measures.

e. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to, or below, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

f. A copy of the application must be provided to the parties listed under Required Notifications.

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then proceed with notifications and implementation of the quiet zone. If the quiet zone is established by reducing the Quiet Zone Risk Index to a level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(a)).

Note: The provisions stated above for crossing closures, grade separations, and wayside horns apply for Public Authority Application to FRA as well.

Section IV—Required Notifications

A. The public authority responsible for the creation of a New Quiet Zone or the continuation of a Pre-Rule Quiet Zone, is required to provide notification to parties that will be affected by the quiet zone. The notification process is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones. Specific information is to be provided so that the crossings in the quiet zone can be identified. The method used to qualify or continue the quiet zone is to be given. The notification process also includes additional information that must be provided to FRA. Once the rule becomes effective, railroads will be obligated to sound train horns when approaching all public crossings unless notified in accordance with the rule that a New Quiet Zone has been established or that a Pre-Rule Quiet Zone is being continued.

The time frames for the notification process is as follows:

- New Quiet Zones—Notification of the establishment of a New Quiet Zone under § 222.39 must be mailed at least 21 days before the routine sounding of train horns for public crossings is to cease (§ 222.43(a)(2)(i)). The routine use of train horns at public crossings will not cease unless the proper notification has been given.
- Pre-Rule Quiet Zones—Notification of the continuation of a Pre-Rule Quiet Zone under § 222.41 must be served no later than December 18, 2004 (§ 222.43(a)(2)(ii)). Failure to provide the required notice will result in the commencement of the sounding of train horns at public crossings on this date.

B. Parties To Be Notified

The public authority that is implementing a New Quiet Zone or is continuing a Pre-Rule Quiet Zone must provide notification of the quiet zone by certified mail, return receipt requested, to the following (*see* § 222.43(a)(1)):

- All railroads operating over the crossings within the quiet zone.
- The highway or traffic control authority, or law enforcement authority having control over vehicular traffic at crossings within the quiet zone.
- The State agency responsible for highway and road safety.
- All landowners owning a private crossing within the quiet zone.
- The Associate Administrator.

C. Required Information

The quiet zone implementation notification should contain the following information (§ 222.43(a)(3)):

1. A list all grade crossings within the quiet zone by both the U.S. DOT crossing number and the street or highway name. This includes public, private and grade separated crossings.

2. The specific date upon which routine use of the train horn will cease at crossings within the quiet zone. The date for New Quiet Zones shall be no earlier than 21 days after mailing of written notification.

3. The notice should state which section contained in the rule is used as the basis for establishment or continuation of the quiet zone.

4. Reference to § 222.39(a)(1), (2), or (3) shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies.

5. Reference to § 222.39(b) shall include a copy of FRA's notification of approval.

6. Reference to § 222.41 shall include a statement as to how the quiet zone is in compliance with that section. If appropriate, it shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies.

7. A certificate of service showing to whom and by what means the notice was provided.

D. In addition to the above required information, the notification to the Associate Administrator also must include the following (§ 222.43(b)):

1. An accurate and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone, dated within six months prior to designation or approval by FRA of the quiet zone. Copies of the inventory forms may be obtain on FRA Web site (*www.fra.dot.gov*).

2. An accurate, complete and current Grade Crossing Inventory Form reflecting SSMs or ASMs in place upon establishment of the quiet zone. SSMs or ASMs that cannot be fully described on the Inventory form must be fully described in writing.

3. The name and title of the person responsible for monitoring compliance with the requirements of this part, and the manner in which that person can be contacted.

4. A list of all parties that received notification of the establishment or continuation of the quiet zone together with copies of the certificates of service showing to whom and by what means the notice was provided.

5. A statement signed by the CEO of each public authority establishing or continuing a quiet zone that certifies that responsible officials of the public authority have reviewed documentation provided by FRA sufficient to make an informed decision regarding the advisability of establishing the quiet zone.

Section V—Examples of Quiet Zone Implementations

Example 1—New Quiet Zone

A public authority wishes to create a New Quiet Zone over four public crossings. All of the crossings are equipped with flashing lights and gates, and the length of the quiet zone is 0.75 mile. There are no private crossings within the proposed zone.

The tables that follow show the street name in the first column, and the existing risk index for each crossing with the horn sounding (''Crossing Risk Index w/Horns'') in the second. The third column, ''Crossing Risk Index w/o Horns'', is the risk index for each crossing after it has been inflated by 66.8% to account for the lack of train horns. The fourth column, ''SSM Eff'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the inflated risk index for the crossing after being reduced by the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (''RIWH'') which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI'') and is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. For this example it is assumed that the Nationwide Significant Risk Threshold is 15,424. In order for the proposed quiet zone to qualify under the rule, the Quiet Zone Risk Index must be reduced to at least either the Nationwide Significant Risk Threshold (15,424) or to the Risk Index with Horns.

Table 1 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 11,250. The Quiet Zone Risk Index without any SSMs is 18,765.

TABLE 1

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns, plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0	25020
	RIWH 11250			QZRI 18765

The public authority decides to install traffic channelization devices at D Street. Reducing the risk at the crossing that has the highest severity risk index will provide the greatest reduction in risk. The effectiveness of traffic channelization devices is 0.75. Table 2 shows the changes in the proposed quiet zone corridor that would occur when traffic channelization devices are installed at D Street. The Quiet Zone Risk Index has been reduced to 14,073.75. This reduction in risk would qualify the quiet zone as the risk has been reduced lower than the Nationwide Significant Risk Threshold which is 15,424.

TABLE 2

Street	Crossing risk index w/ horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH 11250			QZRI 14073.75

The public authority realizes that authorizing the quiet zone by lowering the risk to below the Nationwide Significant Risk Threshold will result in an annual re-calculation of the Quiet Zone Risk Index and comparison to the Nationwide Significant Risk Threshold. As the Quiet Zone Risk Index is close to the Nationwide Significant Risk Threshold (14,074 to 15,424), there is a reasonable chance that the Quiet Zone Risk Index may some day exceed the Nationwide Significant Risk Threshold. This would result in the quiet zone no longer being qualified and additional steps would have to be taken to keep the quiet zone. Therefore, the public authority decides to reduce the risk further by the use of traffic channelization devices at A Street. Table 3 shows the results of this change. The Quiet Zone Risk Index is now 10,320.75 which is less than the Risk Index with Horns of 11,250. The quiet zone now qualifies by fully compensating for the loss of train horns and will not have to undergo annual reviews of the Quiet Zone Risk Index.

TABLE 3

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0.75	5004
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH 11250			QZRI 10320.75

Example 2—Pre-Rule Quiet Zone

A public authority wishes to qualify a Pre-Rule Quiet Zone which did not meet the requirements for Automatic Approval because the Quiet Zone Risk Index is greater than twice the Nationwide Significant Risk Threshold. There are four public crossings in the Pre-Rule Quiet Zone. Three of the crossings are equipped with flashing lights and gates, and the fourth (Z Street) is passively signed with a STOP sign. The length of the quiet zone is 0.6 mile, and there are no private crossings within the proposed zone.

The tables that follow are very similar to the tables in Example 1. The street name is shown in the first column, and the existing risk index for each crossing (''Crossing Risk Index w/o Horns'') in the second. This is a change from the first example because the risk is calculated without train horns sounding because of the existing ban on whistles. The third column, ''Crossing Risk Index w/ Horns'', is the risk index for each crossing after it has been adjusted to reflect what the risk would have been had train horns been sounding. This is mathematically done by dividing the existing risk index for the three gated crossing by 1.668. The risk at the passive crossing at Z Street is divided by 1.749. (See the above discussion in ''Pre-Rule Quiet Zones—Establishment Overview'' for more information.) The fourth column, ''SSM EFF'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the risk index without horns for the crossing after being reduced for the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (RIWH) which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI'') and is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. Once again it is assumed that the Nationwide Significant Risk Threshold is 15,424. The Quiet Zone Risk Index must be reduced to either the Nationwide Significant Risk Threshold (15,424) or to the Risk Index with Horns in order to qualify under the rule.

Table 4 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 18,705.83. The Quiet Zone Risk Index without any SSMs is 31,375. Since the Nationwide Significant Risk Threshold is less than the calculated Risk Index with Horns, the public authority's goal will be to reduce the risk to at least value of the Risk Index with Horns. This will qualify the Pre-Rule Quiet Zone under the rule.

TABLE 4

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0	42000
Y	33500	20083.93	0	33500
Z	15000	8576.33	0	15000
	RIWH 18705.83			QZRI 31375

The Z Street crossing is scheduled to have flashing lights and gates installed as part of the state's highway-rail grade crossing safety improvement plan (section 130). While this upgrade is not directly a part of the plan to authorize a quiet zone, the public authority may take credit for the risk reduction achieved by the improvement from a passive STOP sign crossing to a crossing equipped with flashing lights and gates. Unlike New Quiet Zones, upgrades to warning devices in Pre-Rule Quiet Zones do contribute to the risk reduction necessary to qualify under the rule. Table 5 shows the quiet zone corridor after including the warning device upgrade at Z Street. Note that the Risk Index with Horns and the Crossing Risk Index With Horns for Z Street do not change. The Quiet Zone Risk Index has been reduced to 29,500.

TABLE 5

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0	42000
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 29500

The public authority elects to install four-quadrant gates without vehicle presence detection at X Street. As shown in Table 6, this reduces the Quiet Zone Risk Index to 20,890. This risk reduction is not sufficient to quality as quiet zone under the rule.

TABLE 6

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 20890

The public authority next decides to use traffic channelization devices at W Street. Table 7 shows that the Quiet Zone Risk Index is now reduced to 14,327.5. This risk reduction fully compensates for the loss of the train horn as it is less than the Risk Index with Horns. The quiet zone is qualified under the rule.

TABLE 7

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0.75	8750
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 14327.5

Appendix D to Part 222—Determining Risk Levels

Introduction

The Nationwide Significant Risk Threshold, the Crossing Corridor Risk Index, and the Quiet Zone Risk Index are all measures of collision risk at public highway-rail grade crossings that are weighted by the severity of the associated casualties. Each crossing can be assigned a risk index.

The Nationwide Significant Risk Threshold represents the average severity weighted collision risk for all public highway-rail grade crossings equipped with lights and gates nationwide where train horns are routinely sounded. FRA developed this index to serve as a threshold of permissible risk for quiet zones established under this rule.

The Crossing Corridor Risk Index represents the average severity weighted collision risk for all public highway-rail grade crossings along a defined rail corridor.

The Quiet Zone Risk Index represents the average severity weighted collision risk for all public highway-rail grade crossings that are part of a quiet zone.

The Prediction Formulas

The Prediction Formulas were developed by DOT as a guide for allocating scarce traffic safety budgets at the State level. They allow users to rank candidate crossings for safety improvements by collision probability. There are three formulas, one for each warning device category: (1) automatic gates with flashing lights, (2) flashing lights with no gates, and (3) passive warning devices.

The prediction formulas can be used to derive the following for each crossing:

1. PC which is the predicted collisions.

2. P(FC|C) which is the probability of a fatal collision given that a collision occurs.

3. P(CC|C) which is the probability of a casualty collision given that a collision occurs.

The following factors are the determinants of the number of predicted collisions per year:

- Average annual daily traffic;
- Total number of trains per day;
- Number of highway lanes;
- Number of main tracks;

• Maximum timetable train speed;
• Whether the highway is paved or not;
• Number of through trains per day during daylight hours.

The resulting basic prediction is improved in two ways. It is enriched by the particular crossing's collision history for the previous five years and it is calibrated by resetting normalizing constants. The normalizing constants are reset so that the sum of the predicted accidents in each warning device group (passive, flashing lights, gates) for the top twenty percent most hazardous crossings exactly equals the number of accidents which occurred in a recent period for the top twenty percent of that group. This adjustment factor allows the formulas to stay current with collision trends. The calibration also corrects for errors such as data entry errors. The final output is the predicted number of collisions (PC).

The severity formulas answer the question, ''What is the chance that a fatality (or casualty) will happen, given that a collision has occurred?'' The fatality formula calculates the probability of a fatal collision given that a collision occurs (*i.e.* the probability of a collision in which a fatality occurs) P(FC|C). Similarly, the casualty formula calculates the probability of a casualty collision given that a collision occurs P(CC|C). As casualties consist of both fatalities and injuries, the probability of a non-fatal injury collision is found by subtracting the probability of a fatal collision from the probability of a casualty collision. To convert the probability of a fatal or casualty collision to the number of expected fatal or casualty collisions, that probability is multiplied by the number of predicted collisions (PC).

For the prediction and severity index formulas, please see the following DOT publications: *Summary of the DOT Rail-Highway Crossings Resource Allocation Procedure—Revised,* June 1987, and the *Rail-Highway Crossing Resource Allocation Procedure: User's Guide, Third Edition,* August 1987. Both documents are in the docket for this rulemaking and also available through the National Technical Information Service located in Springfield, Virginia 22161.

Risk Index

The risk index is basically the predicted cost to society of the casualties that are expected to result from the predicted collisions at a crossing. It incorporates three outputs of the DOT prediction formulas. The two components of a risk index are:

1. Predicted Cost of Fatalities = PC × P(FC|C) × (Average Number of Fatalities Observed In Fatal Collisions) × $3 million
2. Predicted Cost of Injuries = PC × (P(CC|C) − P(FC|C)) × (Average Number of Injuries in Collisions Involving Injuries) × $1,167,000

PC, P(CC|C), and P(FC|C) are direct outputs of the DOT prediction formulas.

The average number of fatalities observed in fatal collisions and the average number of injuries in collisions involving injuries were calculated by FRA as follows.

The highway-rail incident files from 1997 through 2001 were matched against a data file containing the list of whistle ban crossings in existence from January 1, 1997 through December 31, 2001 to identify two types of collisions involving trains and motor vehicles (1) those that occurred at crossings where a whistle ban was in place during the period, and (2) those that occurred at crossings equipped with automatic gates where a whistle ban was not in place. Certain records were excluded. These were incidents where the driver was not in the motor vehicle, or the motor vehicle struck the train beyond the 4th locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.[1]

Collisions in the group containing the gated crossings nationwide where horns are routinely sounded were then identified as either fatal, injury only, or no casualty. Collisions were identified as fatal if one or more deaths occurred, regardless of whether or not injuries were also sustained. Collisions were identified as injury only when injuries, but no fatalities resulted.

The collisions (incidents) selected were summarized by year from 1997 through 2001 (see table below). The fatality rate for each year was calculated by dividing the number of fatalities (''Deaths'') by the number of fatal incidents (''Number''). The injury rates were calculated by dividing the number of injuries in injury only incidents (''Injured'') by the number of injury only incidents (''Number'').

The following table lists the results. Note that the number of injuries in the sixth column includes only those injuries resulting from injury only incidents, it excludes any non-fatal injuries sustained in fatal incidents. Non-fatal injuries sustained in fatal incidents are not included in this table. The first line in the table presents information in summary form for the five-year period.

MOTOR VEHICLE INCIDENTS AT NON WB GATED CROSSINGS

	Total incidents	Fatal incidents			Injury incidents		
		Number	Deaths	Rate	Number	Injured	Rate
Total	2,028	255	311	**1.2196**	552	739	**1.3388**
2001	457	70	78	1.1143	119	156	1.3109
2000	430	48	56	1.1667	109	157	1.4404
1999	395	43	59	1.3721	109	144	1.3211
1998	353	46	57	1.2391	105	131	1.2476
1997	393	48	61	1.2708	110	151	1.3727

The fatality rate and the injury rate for the five-year period appear in bold in the first line.

Per guidance from DOT, $3 million is the value placed on preventing a fatality. The Abbreviated Injury Scale (AIS) developed by the Association for the Advancement of Automotive Medicine categorizes injuries into six levels of severity. Each AIS level is assigned a value of injury avoidance as

[1] The data used to make these exclusions is contained in blocks 18—Position of Car Unit in Train; 19—Circumstance: Rail Equipment Struck/Struck By Highway User; 28—Number of Locomotive Units; and 29—Number of Cars of the current FRA Form 6180–57 Highway-Rail Grade Crossing Accident/Incident Report.

a fraction of the value of avoiding a fatality. FRA rates collisions that occur at train speeds in excess of 25 mph as an AIS level 5 ($2,287,500) and injuries that result from collisions involving trains traveling under 25 mph as an AIS level 2 ($46,500). About half of grade crossing collisions occur at speeds greater than 25 mph. Therefore, FRA estimates that the value of preventing the average injury resulting from a grade crossing collision is $1,167,000 (the average of an AIS–5 injury and an AIS–2 injury.)

Notice that the quantity [PC*P(FC|C)] represents the expected number of fatal collisions. Similarly, {PC*[P(CC|C)–P(FC|C)]} represents the expected number of injury collisions. These are then multiplied by their respective average number of fatalities and injuries (from the table above) to develop the number of expected casualties. The final parts of the expressions attach the dollar values for these casualties.

The Risk Index for a Crossing is the integer sum of the Predicted Cost of Fatalities and the Predicted Cost of Injuries.

Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated crossings nationwide where train horns are routinely sounded. FRA identified 33,879 gated non-whistle ban crossings for input to the Nationwide Significant Risk Threshold.

The Nationwide Significant Risk Threshold rounds to 15,424. This value is recalculated annually.

Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the crossings in a defined rail corridor. Communities seeking to establish 'Quiet Zones' should initially calculate this average for potential corridors.

Quiet Zone Risk Index

The Quiet Zone Risk Index is the average of the risk indexes of all the public crossings in a Quiet Zone. It takes into consideration the absence of the horn sound and any safety measures that may have been installed.

Appendix E to Part 222—Requirements for Wayside Horns

Minimum requirements for wayside horn use at highway-rail grade crossings:

1. Highway-rail crossing must be equipped with constant warning time device, if reasonably practical, and power-out indicator;

2. Horn system must be equipped with an indicator or other system to notify the locomotive engineer as to whether the wayside horn is operating as intended in sufficient time to enable the locomotive engineer to sound the locomotive horn for at least 15 seconds prior to arrival at the crossing in the event the wayside horn is not operating as intended;

3. The railroad must adopt an operating rule, bulletin or special instruction requiring that the train horn be sounded if the wayside horn indicator is not visible approaching the crossing, or if this, or an equivalent system, does not indicate that the system is operating as intended;

4. Horn system must provide a minimum of 96 and a maximum of 110 dB(A) when measured 100 feet from the horn in the direction it is installed;

5. Horn system must sound at a minimum of 15 seconds prior to the train's arrival at the crossing and while the lead locomotive is traveling across the crossing. It is permissible for the horn system to begin to sound simultaneously with activation of the flashing lights or descent of the crossing arm; and

6. Horn shall be directed toward approaching traffic.

Appendix F to Part 222—Diagnostic Team Considerations

For purposes of this part, a diagnostic team is a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing. Crossings proposed for inclusion in a quiet zone should be reviewed in the field by such a diagnostic team composed of railroad personnel, public safety or law enforcement, engineering personnel from the public agency with responsibility for the roadway that crosses the railroad, and other concerned parties.

This diagnostic team, using crossing safety management principles, should evaluate conditions at a grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what safety measures authorized by this part might be utilized to compensate for the silencing of the train horns within the proposed quiet zone.

All Crossings Within a Proposed Quiet Zone

The diagnostic team should obtain and review the following information about each crossing within the proposed quiet zone:

1. Current highway traffic volumes and percent of trucks;

2. Posted speed limits on all highway approaches;

3. Maximum allowable train speeds, both passenger and freight;

4. Accident history for each crossing under consideration;

5. School bus or transit bus use at the crossing; and

6. Presence of U.S. DOT grade crossing inventory numbers clearly posted at each of the crossings in question.

The diagnostic team should obtain all inventory information for each crossing, and should check while in the field to see that inventory information is up-to-date and accurate. Outdated inventory information should be updated as part of the quiet zone development process.

When in the field, the diagnostic team should take note of the physical characteristics of each crossing, including the following items:

- Can any of the crossings within the proposed quiet zone be closed, or consolidated with another adjacent crossing? Crossing elimination should always be the preferred alternative, and it should be explored for crossings within the proposed quiet zone.
- What is the number of lanes on each highway approach? Note the pavement condition on each approach, as well as the condition of the crossing itself.
- Is the grade crossing surface smooth, well graded and free draining?
- Does the alignment of the railroad tracks at the crossing create any problems for road users on the crossing? Are the tracks in superelevation (are they banked on a curve?) and does this create a conflict with the vertical alignment of the crossing roadway?
- Note the distance to the nearest intersection or traffic signal on each approach (if within 500 feet or so of the crossing, or if the signal or intersection is determined to have a potential impact on highway traffic at the crossing because of queuing or other special problems).
- If there is a roadway that runs parallel to the railroad tracks, and it is within 100 feet of the railroad tracks when it crosses an intersecting road that crosses the tracks, the appropriate advance warning signs should be posted as shown in the MUTCD.
- Is the posted highway speed (on each approach to the crossing) appropriate for the alignment of the roadway, and the configuration of the crossing?
- Does the vertical alignment of the crossing create the potential for a ''hump crossing'' where long, low-clearance vehicles might get stuck on the crossing?
- What are the grade crossing warning devices in place at each crossing? Flashing lights and gates are required for each public crossing in a New Quiet Zone. Are all required warning devices, signals, pavement markings and advance signing in place, visible and in good condition for both day and night time visibility?
- What kind of train detection is in place at each crossing? Are these systems old or outmoded; are they in need of replacement, upgrading, or refurbishment?
- Are there sidings or other tracks adjacent to the crossing that are often used to store railroad cars, locomotives, or other equipment that could obscure the vision of road users as they approach the crossings in the quiet zone? Clear visibility may help to reduce violation of automatic devices.
- Are motorists currently violating the warning devices at any of the crossings at an excessive rate?
- Do accident statistics for the corridor indicate any potential problems at any of the crossings?

• If school buses or transit buses use crossings within the proposed quiet zone corridor, can they be rerouted to a use single crossing within or outside of the quiet zone?

Private Crossings Within a Proposed Quiet Zone

In addition to the items discussed above, a diagnostic team should examine the following for any private crossings within a proposed quiet zone:

• How often is the private crossing used?

• What kind of signing or pavement markings are in place at the private crossing?

• What types of vehicles use the private crossing?

School buses
Large trucks
Hazmat carriers
Farm equipment

• What is the volume, speed and type of train traffic over the crossing?

• Do passenger trains use the crossing?

• Do approaching trains sound the horn at private crossings?

State or local law forbids or requires it?
Railroad safety rule requires it?

• Are there any nearby crossings where train horns sound that might also provide some warning at the private crossing where no horns sound?

• What are the approach (corner) sight distances?

• What is the clearing sight distance for all approaches?

• What are the private roadway approach grades?

• What are the private roadway pavement surfaces?

Appendix G to Part 222—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
§ 222.21 Use of locomotive horn:		
(a) Failure to sound horn at grade crossing	$5,000	$7,500
Failure to sound horn in proper pattern	1,000	3,000
(b) Failure to sound horn at least 15 and no more than 20 seconds before crossing	5,000	7,500
Sounding horn more than ¼ mile in advance of crossing	1,000	4,000
§ 222.33 Failure to sound horn when conditions of § 222.33 are not met	5,000	7,500
§ 222.45 Sounding locomotive horn at a grade crossing within a quiet zone	1,500	5,000
§ 222.49 (b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
§ 222.59 (c) Routine sounding locomotive horn at a grade crossing equipped with wayside horn	5,000	7,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

PART 229—[AMENDED]

■ 2. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–20302, 21304; 49 CFR 149(c), (m).

■ 3. Section 229.129 is revised to read as follows:

§ 229.129 Audible warning device.

(a) Each lead locomotive shall be provided with an audible warning device that produces a minimum sound level of 96dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive.

(b)(1) Each locomotive built on or after December 18, 2004, shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(2) Each locomotive built before December 18, 2004, shall be tested in accordance with this section before December 18, 2008, to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(3) Each locomotive when rebuilt, as determined pursuant to 49 CFR 232.5, shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a).

(c) Testing of horn locomotive horn sound level shall be in accord with the following requirements:

(1) A properly calibrated sound level meter shall be used that, at a minimum, complies with the requirements of International Electrotechnical Commission (IEC) Standard 61672–1 (2002–05) for a Class 2 instrument.

(2) An acoustic calibrator shall be used that, at a minimum, complies with the requirements of IEC Standard 60942 (1997–11) for a Class 2 instrument.

(3) The manufacturer's instructions pertaining to mounting and orienting the microphone; positioning of the observer; and periodic factory recalibration shall be followed.

(4) A microphone windscreen shall be used and tripods or similar microphone mountings shall be used that minimize interference with the sound being measured.

(5) The test site shall be free of large reflective structures, such as barriers, hills, billboards, tractor trailers or other large vehicles, locomotives or rail cars on adjacent tracks, bridges or buildings, within 400 feet in front of the locomotive and within 200 feet to the sides of the locomotive and microphone. The locomotive shall be positioned on straight, level track.

(6) Measurements shall be taken only when ambient air temperature is between 36 degrees and 95 degrees Fahrenheit inclusively; relative humidity is between 20 percent and 95 percent inclusively; wind velocity is not more than 12 mile per hour and there is no precipitation.

(7) The microphone shall be located 100 feet forward of the front knuckle of the locomotive, 15 feet above the top of rail, at the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. The observer shall not stand between the microphone and the horn.

(8) Background noise shall be minimal: the sound level at the test site immediately before and after each horn sounding event shall be at least 10 dB(A) below the level measured during the horn sounding.

(9) *Measurement procedures.* The sound level meter shall be set for A-weighting with slow exponential response and shall be calibrated with the acoustic calibrator immediately before and after compliance tests. Any change in the before and after calibration levels shall be less than 0.5 dB. After the output from the locomotive horn system has reached a stable level, the A-weighted equivalent sound level (slow response) for a 20 second duration (LAeq,20s) shall be obtained either directly using an integrating-averaging sound level meter, or recorded once per second and calculated indirectly . The arithmetic-average of a series of at least six such readings shall be used to determine compliance. The standard deviation of the readings shall be less than 1.5 dB.

(10) The railroad shall maintain, at a location of its choice, records sufficient to show the date, manner and result of locomotive horn testing conducted in compliance with this part.

(d) This section does not apply to locomotives of rapid transit operations which are otherwise subject to this part.

Appendix B to Part 229—[Amended]

■ 4. The entry for § 229.129 ''Audible warning devices'' in appendix B to part 229 is revised to read as follows:

Section	Violation	Willful Violation
* * * * * * *		
229.129 Audible warning device:		
(a) Prescribed sound levels	$2,500	$5,000
Arrangement of device	2,500	5,000
(b) (1), (ii) Testing	2,500	5,000
(c) Test procedures	2,500	5,000
(c)(10) Records of tests	2,500	5,000
* * * * * * *		

Issued in Washington, DC, on December 5, 2003.

Allan Rutter,

Administrator.

[FR Doc. 03–30606 Filed 12–17–03; 8:45 am]

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H.R. 3287/P.L. 108–180

To award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown et al. v. the Board of Education of Topeka et al. (Dec. 15, 2003; 117 Stat. 2645)

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